TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917.

No. 497.

ROMANA GARZON, APPELLANT AND PLAINTIFF IN ERROR,

vs.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS.

APPEAL FROM AND ON CERTIFICATE OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

(25,818)

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No. 437.

ROMANA GAUZON, APPELLANT AND PLAINTIFF IN ERROR,

vs.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 *Application for the Registration of Title.*

UNITED STATES OF AMERICA,
Philippine Islands:

(Case No. 6303.)

To the Hon. Judge of the Court of Land Registration:

The undersigned Compañia General de Tabacos de Filipinas, through its representative in this City of Iloilo, P. I., hereby applies to have the land hereinafter described, of which it is the absolute owner, brought under the operation of the Land Registration Act:

(1) A piece of land situated in the municipality of San Carlos, Occidental Negros, P. I., which constitutes the Hacienda named "San Jose," the meet-s and bounds of which more fully appear from the attached technical description, except the adjoining owners, that is to say, the heirs of Antonio Castro on parcel "A" and the heirs of Carlos Borromeo Masicampo on parcel "B," who after the land was surveyed, were substituted by the present adjoining owners Juan Rivera Libonpacil and Tranquilino Broce who purchased from them; containing 602 hectares, 76 ares and 65 centares, more particularly bounded and described in the attached plan.

(2) The said land at the last assessment for the payment of the land tax was assessed at $16,950, United States currency, and the buildings at $2,250, United States currency.

2 (3) There is no mortgage or incumbrance of any kind whatsoever affecting said land nor is there any person having any interest or participation therein, to the best of my knowledge and belief.

(4) — have acquired said property by purchase at public auction on the 12th of September, 1906, by virtue of mortgage foreclosure proceedings instituted in the Court of First Instance of Occidental Negros by the pe-itioner against Doña Romana Guazon y Cataebas, widow of Vega, the original owner of the property in question.

(5) Said property is occupied by the petitioner.

(6) The names and full addresses, as far as known to me, of the owners of all adjoining properties are as follows:

River Andaong, municipality of San Carlos, Occidental Negros.

Heirs of Antonio Castro, now of Juan Rivera Libonpacil, municipality of San Carlos, Occidental Negros.

Beach, municipality of San Carlos, Occidental Negros.

River Hindalaman, municipality of San Carlos, Occidental Negros.

The public road on the estate, San Carlos, Occidental Negros.

Teodoro Vega, municipality of San Carlos, Occidental Negros.

Andres Mondragon, Iloilo, Iloilo, P. I.

Domingo Medina, San Carlos, Occidental Negros.

Heirs of Carlos Borromeo Masicampo, now of Tranquilino
municipality of San Carlos, Occidental Negros.

Ramon Lopez, municipality of San Carlos, Occidenta
gros.

3 (7) That I am——

(8) (That my) full name, residence and post office a
is as follows: Compañia General de Tabacos de Filipinas,
Loney, Iloilo, P. I.

(9) Should the Land Registration Act invoked not be app
to the case (——) hereby apply for the benefit of Chapter
Act No. 926, as (——) have been in possession of the land
(——) applying it to the cultivation of (——) for (——) y
being fenced in on the (——) side of the perimeter.

Dated at Iloilo this 12th day of March, 1910.

(S'g'd) COMPAÑIA GRAL. DE
BACOS DE FILIPINA

By the Acting Manager of
the Branch at Iloilo, BENITO O. CARRANCH

List of documents attached:

1. Plan prepared by the private surveyor Julio Hernandez,
Exhibit 1.

2. Technical description signed by the same surveyor
Exhibit 2.

3. Real title issued by the Director General de Administració
de Filipinas to Romana Tanzon y Catalbas, widow of Vega,
Exhibit 3.

4. A mortgage instrument (deed of purchase and sale—
executed by Andres Mondragon in favor of the Compañia
Tabacos de Filipinas certified to before the notary public T
Saenz on the 22d day of June, 1908.

5. Certificate issued by the sheriff of the Province of Occ
Negros in favor of the Compañia Gral. de Tabacos, mark
hibit 5.

4 6. Another deed of absolute sale executed by the th
vincial governor and sheriff of Occidental Negros,
Lopez, in favor of the Compañia General de Tabacos, mark
hibit 6.

(Certified to before notary public J. M. Arroyo in Iloilo, Ma
1910.)

EXHIBIT 2.

This is a long technical description of the property, entitl
scription of the Hacienda San Jose, property of the Compañ
eral de Tabacos, in the municipality of San Carlos, Occidental
P. I." Two parcels of land are therein described, the first, p
as measuring 77 hectares 45 ares and 98 centares, and the
parcel B, as measuring 526 hectares 80 ares. Omitted for t
of brevity.

5 (EXHIBIT 3, EXHIBIT B OF PETITIONER.)

Don Angel Aviles y Merino, Director General de Administración Civil de Filipinas.

Whereas, Doña Romana Tanson y Catalbas, widow of Vega, 35 years of age, a widow, agriculturist, a resident of the town of Calatrava, Province of Occidental Negros, all of which circumstances are accredited by a document issued by the municipal tribunal of her town on the third instant, together with the personal cedula of the 8th class, No. 3497, exhibited by her, all of which evidence is attached to the record, has petitioned for the composition with the State of a parcel of crown land in the barrio of San Carlos, pueblo of Calatrava, Province of Occidental Negros, the situation, extent, assessed valuation and boundaries of which are as follows:

Situated in the sitio of Subungcogong, tilled and untilled, measures 116 quiñones, 4 balitas, 9 loanes and 55 square brazas, equivalent to 465 hectares, 33 ares, 82 centares, assessed at 3,722 pesos 71 centimos, and bounded as follows:

On the north, government forest land, the River Andong, and on the other side of the river lands of Don Roberto Masicampo.

On the east, the said River Andong and on the opposite side the lands of Don Roberto Masicampo, government mangrove swamps and the beach.

On the south, said mangrove lands and the beach, more mangrove swamps belonging to the government, the River Gigalaman, and on the other side of this river land now being applied for by Don Leon Vega and land of Victor Visitacion, and

On the west, the said River Gigalaman, and on the other side lands belonging to Don Victor Visitacion and the government
6 forest lands referred to above.

And as by a decree issued by this office on the 27th of January, 1892, the property to said lands has been gratuitously awarded in composition, petitioner having first paid the sum of 372 pesos, 27 centimos, which sum represents ten per centum of the asssesed value to cover the costs of survey, marking the boundaries, and other expenses, I issue the present title deed in order that Doña Romana Tanson y Catalbas, widow of Vega, may have and hold the said land as the legitimate owner thereof.

* * * * * * *

Given in Manila this 26th day of December, 1894.

(S'g'd) ANGEL AVILES,
Inspector General de Montes.

(S'g'd) I. GUILIELINI. (?)

Property title to a parcel of land situated in the barrio of San Carlos, sitio of Subungcogong, within the jurisdiction of the pueblo of Calatrava, of the Province of Occidental Negros, issued in favor of

Doña Romana Tanson y Catalbas, widow of Vega, in accordance
the provisions of the royal decree of the 25th of June, 1880.

* * * * * * *

This title deed has been registered in the office of the Insp
General de Montes under the number 1570, Manila, Decembe
1894.

(S'g'd) I. GUILIELINI. (

This title deed was registered in this government in the corres
ing book under the number 1191 at the back of folio 349.

Bacolod, March 26, 1895.

(S'g'd) V. CONTRERO. (

7 On account of the lack of the old indexes, the fore
document was registered (anotado preventivamente) in
visional book No. 3 in Calatrava, at folio 5, property No. 18, an
tion letter A.

Bacolod, March 30, 1895.

(S'g'd) ROBUSTIANO (illegib

8 (EXHIBIT No. 4, EXHIBIT C OF PETITIONER.

Deed of Purchase and Sale.

Know all men by these presents that the undersigned, t
On the one hand, Don Andres Mondragon y Mapa, of lega
pharmacist, united in marriage with Doña Marciana Salameda
dent of the municipality of San Carlos, Province of Occident
gros, Philippine Islands,

And on the other hand the Compañia General de Tabacos d
pinas, and in the name thereof Don Carlos A. Ferrandiz, of
age, married, merchant, resident of the city and municipal
Iloilo, Province of Iloilo, Philippine Islands, as the represen
of the said company, by virtue of the powers conferred upon h
the General manager thereof in these Islands, Don Antonio
y Pomar, in an instrument drawn up in the city of Manila
the notary public Don Francisco Dominguez on the 16th of
1907, which instrument contains among others the following
"1. To intervene and use the signature as the attorney in
the Compañia General de Tabacos de Filipinas, in all matters
it has on hand in the branch established in the Provinces of
and the Islands of Panay and Negros, and in other matters d
ing thereon, either judicially or extrajudicially."

The clause cited faithfully agrees with the original, and w
the two above-mentioned parties have the necessary legal capa
enter into contracts and incur obligations, they her
9 their own free will formulate the deed of sale whic
have agreed upon, subject to the following conditions:

First. Don Andres Mondragon y Mapa sets forth and de

That in the barrio of Subungcogon, municipality of San Carlos, Province of Occidental Negros, Philippine Islands, he is in the possession of, in the capacity of owner, and has enjoyed full dominion, acquired through proper and legal titles for over two years, but that the former owners from whom he acquired them had been in the possession of and had cultivated them under the same title since time immemorial, certain lands under cultivation situated to the north of the Hacienda San Jose, which hacienda is situated in the *sm*ame district and is owned by the Compañia General de Tabacos de Filipinas, with which company he has agreed to alienate and transfer thereto a strip of the said land situated on the northern side of the said Hacienda San Jose; this said strip is bounded on the north by the rest of the lands of Don Andres Mondragon; on the south and east by the said Hacienda San Jose belonging to the Compañia General de Tabacos de Filipinas, and on the west by the aforesaid Hacienda San Jose and lands belonging to Sr. Mondragon.

Second. Sr. Mondragon further declares that at the present time, on account of the lack of sufficient evidence, he is unable to determine with precision the area of the strip of land which he has agreed to transfer to the said company, but he declares that it is already annexed to the said Hacienda San Jose and that the boundaries of the latter on the north (the strip of land referred to being already included) are indicated by stone monuments which were erected at the time of the recent survey of the hacienda by the surveyor Don Julio Hernandez, on the very places indicated by Mr. Mondragon himself, who was present and who assisted in making the said survey. So that the true area and actual boundaries of the said Hacienda San Jose (the said parcel of land being included) are those which appear in the plan of the said hacienda which was prepared by the said surveyor as a result of the survey made by him assisted by and in full agreement with the said Sr. Mondragon.

Third. The said Don Andres Mondragon also sets forth: That in consideration of the sum of one thousand two hundred pesos (P 1,200.) Philippine currency, which the Compañia General de Tabacos de Filipinas will pay to him in the manner hereinafter set out and subject to the conditions of this contract, by these presents sells and transfers, abolutely and in perpetuity, in favor of the said Compañia General de Tabacos de Filipinas, its successors and assigns, the said parcel or strip of land to which reference has been made in the preceding clauses, whatever the area of the same may be, provided that it does not extend beyond the present northern boundaries of the Hacienda San Jose belonging to the said company between the Rivers Andoon and Gigalaman, which boundaries are duly indicated on the plan of the said hacienda prepared by the surveyor Don Julio Hernandez and set forth in the technical description subscribed by the same; that the vendor, Sr. Mondragon, agrees to the area and boundaries which, after including the parcel sold, the Hacienda San Jose at present contains as shown by the said technical documents and to which no person has any reason to object.

Fourth. By virtue of this contract the purchasing company becomes the owner of the said property and of all of its improvements, crops, easements and other rights annexed thereto, free of all charges and encumbrances; Sr. Mondragon being obliged to respond for the eviction and warranty of this sale in accordance with law.

Fifth. The price agreed upon of one thousand two hundred pesos (P1,200.) Philippine currency, will be paid by the company to Señor Mondragon in the following manner: Five hundred pesos (P500) at the time this contract is signed by the parties, and the remaining seven hundred pesos (P700.) as soon as the Court of Land Registration grants the application which the company will have to present in order to secure the title to the property of the said Hacienda San Jose in accordance with the survey and plan recently made by the surveyor Don Julio Hernandez and issues the certificate of title in accordance with the provisions of the Land Registration Act No. 496; it being understood as being especially agreed upon that Don. Andres Mondragon y Mapa is obligated to lend all assistance to the said company in securing the said title and coursing the proceedings; that he will personally appear
12 in the Court of Land Registration at whatever point in the Islands of Negros the hearing will be held, in order to testify as a witness in behalf of the Company and to present for the same purpose all other witnesses necessary to legally prove the legitimate ownership rights acquired by him in the parcel of land which by this contract he sells and transfers to the said company; that he will defray all the expenses occasioned by his appearance and that of his witnesses in the Court of Land Registration, with the exception of travel by sea, which will be paid by or will be chargeable to the company.

Sixth. The said one thousand two hundred pesos, (P1,200.) the price of the sale, will bear interest at the rate of seven per cent per annum both for the vendor and the purchaser, so long as the said sum is not paid in full.

In witness whereof the contracting parties affix their signatures in the city and municipality of Iloilo, Province of Iloilo, Philippine Islands, this 22d day of June, 1908, A. D. (Signed) Andres Mondragon. (Signed) Compañia Gral. de Tabacos de Filipinas, Manager of the branch at Iloilo, C. A. Ferrandiz. Signed in the presence of E. Tormo and Miguel Gonzalez.

(Notary's certificate dated June 22, 1908, follows.)

13 (EXHIBIT No. 5. EXHIBIT D OF PETITIONER.)

UNITED STATES OF AMERICA,
Philippine Islands:

Office of the Sheriff of Occidental Negros, Tenth Judicial District.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff,

vs.

ROMANA TANSON Y CATALBAS, Widow of Vega, Defendant.

Execution of Judgment. (*F.* 115, *Book* 2 *Diario. Received Sept.* 15, 1905, 10:45 *A. M. No.* 656, *and Filed for Registry.*)

I, Manuel Lopez Villanueva, Governor and Sheriff of the Province of Occidental Negros, belonging to the Tenth Judicial District, P. I. Certify: That on the sixth day of August of the pre-ent year, by virtue of a writ of execution issued by the Court of First Instance of this Province in the above-entitled cause ordering the collection of the amount of P58,687.03, Philippine currency, in order to comply with the judgment dictated in the said cause, togther with the agreed interest of 10 per cent per annum from the 15th of July, 1905, and the costs and expenses of this execution, by means of the levy upon and sale of the property mentioned in the said execution, on this date I have sold at public auction in accordance with the provisions of law applicable to the case the property hereinafter described to Mr. Manuel Couto, in the name and representation of the
14 plaintiff Compañia General de Tabacos de Filipinas, married, of legal age, and resident of this capital, for the sum of P64,326.92 Philippine currency, as being the only bidder, this being the price which has been applied to the said debt on account of said property which is described in the following manner:

"A sugar plantation called San Jose, situated in the sitio of Sibungcogon, barrio of San Carlos of this province, of what used to be the pueblo of Calatrava, consisting of a parcel of land measuring 465 hectares and 33 ares and 82 centares; bounded on the north by government forest land and the River Andong and on the other side of this river by lands of Don Roberto Masicampo; on the east the same River Andong and on the opposite side lands belonging to the same Roberto Masicampo, mangrove swamps belonging to the government, the beach, other public mangrove swamps, the River Gigalaman and on the other side of this river lands applied for by Don Lope Vega and those of Don Victor Visitacion; on the south the sea; and on the west the said River Gigalaman and on the opposite side the lands of Don Victor Visitacion and the said state forest lands. Two steam engines, one of 12 horse power and the other of 8 horse power marked K. E. I. and Blai Kir Brothers respectively with their corresponding boilers; a storehouse of light materials with a nipa

roof; four storehouses for bagasse, built of light materials with nipa roofs; 387 lengths of tram rails, equivalent to 1935 meters, and three switches, all partly worn; 15 wagons in bad condition; one set of scales in good condition; one warehouse with galvanized iron roof; two furnaces with a set of twelve sugar boilers and two extra
15 ones; twenty workmen's dwelling houses of light materials; one corn-mill; sixteen plows marked "Urquijo"; Two iron harrows; 14 tubes for the boiler of the large engine; 60 sheets of galvanized iron for locusts; 23 worn spades.

"The said property is subject to the right of redemption for the period of one year from this date according to law.

"In witness whereof I sign this certificate in Bacolod this 12th day of September 1906.

(Sgd.) "MANUEL LOPEZ,
"Sheriff of Occidental Negros.

"The foregoing document is registered in the book corresponding to the municipality of Calatrava at folio 152, property No. 18 inscription 10. Bacolod, September 19, 1906.

(Sgd.) "JULIUS S. REIS, *Registrar.*"

16 (EXHIBIT No. 6. EXHIBIT E OF PETITIONER.)

Heading and Title.

Know all men by these presents:

Whereas, by virtue of a writ of execution issued by the Court of First Instance of Negros Occidental against Doña Romana Gauson y Catalbas, widow of Vega, in the above entitled cause, levy was made upon the property belonging to said Doña Romana Gauson y Catalbas, widow of Vega, as described hereinafter; and

Whereas, I, Manuel Lopez y Villanueva, the then Governor and sheriff of the Province of Occidental Negros on the 25th of September, 1906, the date on which as sheriff of the said Province of Occidental Negros, I sold at public auction all the lands, right title and interest, and rights of dominion of said Doña Romana Guason y Catalbas, widow of Vega, which she had or might have in the said property, description of which is hereinafter made;

And whereas at said auction sale the said property was adjudicated to the Compañia General de Tabacos de Filipinas, which was the highest bidder, for the amount which appears in the certificate of the sale and which is as follows:

"United States of America, Philippine Islands, Office of the Sheriff of Occidental Negros. Tenth Judicial District. Compañia General de Tabacos de Filipinas, plaintiff, vs. Doña Romana Tanson y Catalbas, widow of Vega, defendant. Execution of Judgment, page 115, book 2 diario; received September 15, 1906, 10:45 A. M. No. 656
17 and filed for registry. Initials J. B.

"I, Manuel Lopez Villanueva, Governor and Sheriff of the Province of Occidental Negros, belonging to the Tenth Judicial District, P. I.

"Certify: That on the sixth day of August of the present year, by virtue of a writ of execution issued by the Court of First Instance of this Province in the above-entitled cause ordering the collection of the amount of P58,687.03, Philippine currency, in order to comply with the judgment dictated in the said cause, together with the agreed interest of 10 per cent per annum from the 15th of July, 1905, and the costs and expenses of this execution, by means of the levy upon and sale of the property mentioned in the said execution, on this date I have sold at public auction in accordance with the provisions of law applicable to the case the property hereinafter described to Mr. Manuel Couto, in the name and representation of the plaintiff Compañia General de Tabacos de Filipinas, married, of legal age, and resident of this capital, for the sum of P64,325.92 Philippine currency, as being the only bidder, this being the price which has been applied to the said debt on account of said property which is described in the following manner:

"'A sugar plantation called San Jose, situated in the sitio of Sibungcogon, barrio of San Carlos of this province, of what used to be the pueblo of Calatrava, consisting of a parcel of land measuring 465 hectares 33 ares and 82 centares; bounded on the north by government forest land and the River Andong and on the other side of this river by lands of Don Roberto Masicampo; on the east the same River Andong and on the opposite side lands belonging
18 to the same Roberto Masicampo, mangrove swamps belonging to the government, the beach, other public mangrove swamps, the River Gagalaman and on the other side of this river lands applied for by Don Lope Vega and those of Don Victor Visitacion; on the south the sea; and on the west the said River Gigalaman and on the opposite side the lands of Don Victor Visitacion and the said state forest lands. Two steam engines, one of 12 horse power and the other of 8 horse power marked K. E. I. and Blai Kir Brothers respectively with their corresponding boilers; a storehouse of light materials with a nipa roof; four storehouses for bagasse, built of light materials with nipa roofs; 387 lengths of tram rails, equivalent to 1935 meters, and three switches, all partly worn; 15 wagons in bad condition; one set of scales in good condition; one warehouse with galvanized iron roof; two furnaces with a set of twelve sugar boilers and two extra ones; twenty workmen's dwelling houses of light materials; one corn-mill; sixteen plows marked "Urquijo"; Two iron harrows; 14 tubes for the boiler of the large engine; 60 sheets of galvanized iron for locusts; 23 worn spades.'

"The said property is subject to the right of redemption for the period of one year from this date according to law.

"In witness whereof I sign this certificate in Bacolod this 12th day of September 1906.

(Sgd.) "MANUEL LOPEZ,
"Sheriff of Occidental Negros.

"The foregoing document is registered in the book corresponding to the municipality of Calatrava at folio 152, property No. 18 inscription 10. Bacolod, September 19, 1906.

(Sgd.) "JULIUS S. REIS, *Registrar.*"

19 Wherefore by virtue of the law in these cases made and provided, I, Manuel Lopez, Sheriff of the Province of Occidental Negros on the date at which the foregoing auction sale was held, by virtue of the amount which was considered the price of the said sale, by these presents sell, transfer and deliver in perpetuity to the said purchaser the Compañia General de Tabacos de Filipinas, its successors and assigns, all right, title and interest and all rights of action which the said Doña Romana Gauson y Catalbas, widow of Vega, the defendant, has or may have in the said property, appurtenancies and the improvements therein described, on the date on which the attachment of said property was effected, in order that the said Compañia General de Tabacos de Filipinas, its heirs and assigns, shall hold, possess, use, and enjoy in perpetuity said property and its improvements and appurtenancies.

In witness whereof I sign these presents this 2d day of February, 1910.

(Sgd.) MANUEL LOPEZ.

Signed in presence of:

(Sgd.) E. PADILLA.
" B. L. G. (Illegible.)

UNITED STATES OF AMERICA,
Philippine Islands,
Province of Iloilo:

In the municipality of Iloilo, Province of Iloilo, before me appeared this 3d day of February, 1910, A. D., Don Manuel Lopez, whom I certify to be the person who executed the foregoing document and who declared this to be an act of his free will and
20 deed. He displayed cedula No. 368155 issued in Victorias, January 3, 1910.

Before me,
(Sgd.) JOSÉ ATADERO,
Notary Public.

Commission expires December 31, 1910.

Office of the Sheriff of the Province of Iloilo.

The foregoing document, executed according to law by the former Provincial Sheriff Mr. Manuel Lopez, has been duly noted or registered in this office. The duplicate of the same was sent to the office of the Register of Deeds of this Province and the triplicate is in the files of this office of the Sheriff of Occidental Negros.

Bacolod, Occidental Negros, February 7, 1910.

(Sgd.) M. YULO,
Provincial Sheriff, Occidental Negros.
By A. ARANETA, *Deputy Sheriff.*

21 *Declaration of Real Property (Tax No. 516).*

I, Romana Gauson Catalbas, residing at the Hacienda San Jose in the municipality of San Carlos, Province of Occidental Negros, hereby certify that I am the owner of the real property situated in the barrio of Subongcogon, Municipality of San Carlos, Province of Occidental Negros, which contains approximately 465 hectares 33 ares 82 centares, and the description of which is as follows:

Land bounded on the north by Andres Mondragon and the River Andoon and on the other side of this river lands of Don Roberto Masicampo; on the east the same river Andoon and on the opposite side by the lands of the said Mascicampo; government mangrove swamp land and the beach, another mangrove swamp and the river Gidalaman, and on the other side of this river lands applied for by Don Leon Vega and those of Don Victor Visitacion; and on the west the said river Gigalaman and on the opposite side the lands of Don Victor Visitacion and the said forest land belonging to the Government.

Improvements; 50 workmen's dwelling houses of light materials; one storehouse of strong materials with nipa roof; five warehouses for the storage of combustibles, built of light material with nipa roof; 1 sugar warehouse with iron roof and sides of pampanga; 1 estate dwelling-house of strong materials with nipa roof.

The true and just value and annual rental value of the property described in this declaration are as follows:

Land	P33,900.00
Improvements	4,150.00
Total	P38,050.00
Annual rental value	6,000.00

22 This property was previously declared under tax No. 189, barrio of Sobongcogen, Municipality of San Carlos.

(Sgd.) JOAQUIN SIERRA,
For R. G., Widow of Vega.

(Signature of owner.)

Subscribed to and sworn to before me this 31st day of May, 1906.

(Sgd.) CRISOLOGO AARANETA,
Municipal Secretary.

We, the undersigned members of the municipal board of tax assessors of the municipality of San Carlos, Province of Occidental Negros, hereby assess the value and annual rental value of the property described in this declaration as follows:

400 Hda. 1. A. 65 Hda. 2 a. A.

Land	P43,250.00
Improvements	3,500.00
Total	P46,750.00
Annual rental value	5,000.00

Done this 23d day of August, 1906.

(Sgd.) AGUSTIN ELAGAN,
Municipal President.

(Sgd.) HENRY C. HOPKINS,
Municipal Treasurer.

(Sgd.) FRANCISO FABROS,
Deputy Provincial Treasurer.

We hereby certify that the provincial board of tax appeals at its meeting held on the — day of —— assessed the value and annual rental value of the property described in this declaration as follows:

23	400 Hda. of 1st. and class 1st. and 2d. rural....	P35,900.00
	65 Hda. of 2d.	
Improvements		3,500.00
Total		P39,400.00
Annual rental value		1,970.00

(Sgd.) ——— ———,
Provincial Governor.

(Sgd.) ——— ———,
Provincial Secretary.

I hereby certify that the central equalizing board at its meeting held on the — day of ——, assessed the value and annual rental value of the property described in this declaration as follows:

Land	P44,880.00
Improvements	3,500.00
Total	48,380.00
Annual rental value	2,419.00

Values as charged by central equalizing board (see resolutions filed.)

(Sgd.) E. A. McCREARY,
Treasurer Occidental Negros.
By PAUL WURTHRICH,
Deputy.

(Stamp.)
March 7, 1910. Part of 6 R., 1540362.

24 *Declaration of Real Property. Tax No.* 1156.

This declaration includes declaration No. 830. The tax commences in the year 1908.

I, Compañia Tabacalera, residing at Philippine Islands, in the municipality of San Carlos, Province of Occidental Negros, hereby certify that I am the owner of the real property situated in the barrio of Subongcogon, municipality of San Carlos, Province of Occidental Negros.

Land ....
Improvements, a house of light materials 6 by 5 brazas .....

The true and just value and annual rental value of the property described in this declaration are as follows:

Land	.....
Improvements	P350.00
Total	350.00
Annual rental value.....	.....

This property was previously declared under tax No. 830, barrio of Subongcogon, municipality of San Carlos.

(Sgd.) L. PIJUAN,
Administrator.

Subscribed and sworn to before me at San Carlos, this 21st day of November, 1908.

(Sgd.) H. C. HOPKINS,
Municipal Secretary.

We, the undersigned members of the municipal board of tax assessors of San Carlos, Province of Occidental Negros, hereby
25 assess the value and annual rental value of the property described in this declaration as follows:

Land	.....
Improvements	P350.00
Total	P350.00
Annual rental value.....	60.00

Done this third day of December, 1908.

(Sgd.) PELAGIO CARBAJOSA,
Municipal President.

(Sgd.) HENRY C. HOPKINS,
Municipal Treasurer.

(Sgd.) HENRY C. HOPKINS,
Deputy Provincial Treasurer.

We hereby certify that the provincial board of tax appeals at its meeting held on the 29th day of January, 1909, assessed the value and annual rental value of the property described in this declaration as follows:

Land	.....
Improvements	P350.00
Total	P350.00
Annual rental value.....	18.00

(Sgd.) M. YULO,
Provincial Governor.

(Sgd.) PETRONILO MALATA,
Acting Provincial Secretary.

I hereby certify that the central equalizing board at its meeting held on the — day of ——, assessed the value and annual rental value of the property described in this declaration as follows:

26

Land	.....
Improvements	P350.00
Total	P350.00
Annual rental value.....	18.00

(Sgd.) E. A. McCREARY,
Treasurer, Occidental Negros.
By (Illegible), *Deputy.*

March 7, 1910. Part of G.R. No. 15403[illegible].

27

Heading and Title Omitted

Case No. 6303.

Amended Application.

Now comes the undersigned in the name of the petitioner and to the Honorable Court respectfully prays that it allow the following amendments to the technical description and plan attached to the application referred to, in compliance with the order of July 8th last:

1. The measurements of the sides as given below should be substituted by the true measurements indicated herein as those appearing in the plan and description are erroneous.

Technical description omitted.

Manila, September 17, 1910.

(Sgd.) ANT. V. CORREA,
For the Compañia General de Tabacos de Filipinas.

(Certificate of notary public, dated September 17, 1910, follows.)

28 Heading and Title.

Court of Land Registration.

Application to Fix Date for Hearing.

Now comes the undersigned in the name and representation of the applicant and sets forth:

That as the said petitioning company has important negotiations pending which depend upon the securing of title to the hacienda which is the subject of the application, it is to the great interest of the company that action be taken in the above-entitled proceedings at an early date; he therefore prays this honorable court to fix the earliest date possible for the hearing of the said application.

Manila, September 20, 1910.

(Sgd.) ANT. V. CORREA,
General Manager for the Compañia General de Tabacos de Filipinas.

(Certified to before a notary public September 20th, 1910.)

(Here follows statutory notice to the Attorney-General of the Philippine Islands and to the Director of Public Works of the petition for registration of the land in question before the Court of Land Registration, dated December 2, 1910.)

(Here follows Clerk's notice of December 6, 1910, to the petitioner advising it that the petition was set for hearing on January 4, 1911.)

29 Heading and Title Omitted.

Court of Land Registration.

Case No. 6303.

Opposition.

Now comes the Attorney-General in representation of the Government of the Philippine Islands in the above-entitled case and to the court sets forth.

1st. That the Compañia General de Tabacos de Filipinas prays that in accordance with the Land Registration Act there be registered in its name a parcel of land situated in the jurisdiction of the Municipality of San Carlos, Occidental Negros, the boundaries and extent of which are given in the application and plan attached thereto, alleging that said petitioner acquired the said property by purchase at public auction on September 12, 1906.

2nd. That the petitioner presented as original title of ownership a title deed issued by the late Dirección General de la Administración Civil de Filipinas to its alleged predecessor in interest, Romana Tanzon, on December 26th, 1894; that this title deed sets

forth the area as being only 465 hectares 33 ares and 82 centares, whereas the land applied for actually measures 602 hectares 76 ares and 65 centares, a difference of 137 hectares 42 ares and 83 centares.

3rd. That this excess are is the property of the Government of the United States and is under the control and administration of the Philippine Islands, since the petitioner does not offer any proof of his ownership with respect to the said difference.

30 4th. That furthermore, the petitioner filed his application at a time when Act No. 1875 had already gone into force, and it appears from the plan presented that it was not made in accordance with the provisions of said Act.

For all of the foregoing, the undersigned objects to the registration sought and prays the court to deny the application with the costs against the petitioner.

Manila, December 24, 1910.

(Sgd.) GEO. R. HARVEY,
Acting Attorney-General.

(Certified to before a notary public on the same date.)

(Here follows duplicate of statutory notice to Attorney-General and Director of Public Works of December 2, 1910, previously mentioned.)

31 Heading and Title.

Court of Land Registration.

Case No. 6303.

I, Ralph E. McFie, clerk of the Court of Land Registration of the Philippine Islands, hereby certify that in compliance with an order of the aforesaid court, due publication was made in Nos. 51 and 52 of the Official Gazette dated December 21 and 28, 1910, respectively, in both English and Spanish, in conformity with section 1, Act No. 1678 of the Philippine Commission, of a notice relative to the above entitled case and that notification was made to the Attorney-General of the Philippine Islands and the Director of Public Works, both of Manila, P. I., the municipal council of San Carlos, Juan Rivera Libonpacil, Teodoro Vega, Domingo Medina, Tranquilino Broce, and Ramon Loqez, these six in San Carlos, Occidental Negros, P. I.; and Andres Mondragon of Iloilo, Iloilo, P. I., by sending to each of them on the 6th day of December, 1910, a copy in Spanish of the notice aforesaid by registered mail. In witness whereof I hereunto set my hand at Manila this 29th day of December, 1910.

(Sgd.) RALPH E. McFIE,
Clerk of the Court.

32 Heading and Title.

Case No. 6303.

In the Court of Land Registration, Sitting in Special Session in the Pueblo of San Carlos, Occidental Negros, P. I.

Now comes the objector, Romana Gauzon, widow of Vega, thru her undersigned attorney, and to the honorable court sets forth:

1st. That she opposes the application of the Compañia General de Tabacos de Filipinas for the registration in the name of the said company of the hacienda "San Jose" or "Subongcogon," situated in the pueblo of San Carlos, Occidental Negros, Philippine Islands, the detailed description whereof appears in the application, plan and technical description filed by the petitioner and attached to the record of the above-entitled case.

2d. The objector bases her opposition on the following grounds:

(*a*) That on the 27th of September, 1905, the Compañia General de Tabacos de Filipinas commenced proceedings in the Court of First Instance of Occidental Negros, Philippine Islands (Civil action No. 85 of said court) against the objector Doña Romana Gauzon, widow of Vega, to foreclose a mortgage on the hacienda of "San Jose" or "Subongcogon."

(*b*) That by reason of the said proceedings, and at the instance of the plaintiff, Don Juan Pomar, a person proposed by the said plaintiff, was appointed receiver of the property of the de-
33 fendant in that action; included in this property was the hacienda Subongcogon or San Jose, and the said receiver, after furnishing bond and taking the oath of office, entered upon his duties and took charge of the said property, among which was the hacienda San Jose or Subongcogon and that the said Don Juan Pomar is still in charge thereof.

(*c*) That as a result of the judgment rendered in the foreclosure proceedings, the said hacienda was sold at public auction by the sheriff of this province and adjudicated to the Compañia General de Tabacos de Filipinas, with the express stipulation that the defendant, that is to say Doña Romana Gauzon, widow of Vega, should have the right to redeem the property within the period of twelve (12) months dated from the 12th of September of the year 1906, the date on which the said sale took place.

(*d*) That the Court of First Instance of this province did not authorize the receiver Juan D. Pomar to turn over the said hacienda "San Jose" or "Subongcogon" to the Compañia General de Tabacos de Filipinas, or to any representative of the said compañy or to any other person whatsoever.

(*e*) That neither the sheriff of Occidental Negros, nor any of his deputies, has turned over the said property to the Compañia General de Tabacos de Filipinas or to any other person in its name.

(*f*) That on the 12th day of March, 1907, as a result of a second action (case No. 249 in the Court of the Tenth Judicial District)

for the recovery of a sum of money, brought by the Compañia General de Tabacos de Filipinas, (the petitioner herein),
34 against Doña Romana Gauzon (the objector herein) and at the instance of the plaintiff, the right of the herein objector to repurchase and redeem the hacienda "San Jose" or "Subongcogon" was attached by one of the deputies of the sheriff of Occidental Negros.

(*g*) That on the 29th day of August, 1907, the Court of First Instance of Occidental Negros, Philippine Islands, entered judgment in the said second civil action, the dispositive part of which is as follows:

"The judgment of the court is that Romana Gauzon shall pay to the plaintiff the sum of P7,838.62, with interest at the rate of ten per cent per annum counted from the 12th day of September, 1906, until the payment is effected; that to the payment of this sum and interest, as well as the further sum of P500 which is adjudicated as costs in favor of the plaintiff, there shall be applied the net profits of the sugar derived from the attached cane of the defendant and from the personal property and live stock also attached on the hacienda San Jose in this action, and in case that the foregoing is insufficient for the purpose there shall also be applied the necessary amount derived from the sale of the right to repurchase the hacienda which has been attached from defendant, and it is ordered that the receiver shall at once render an account of the sugar produced from the said hacienda; that the execution of this judgment, if it becomes final, shall not issue until such time as the said account has been presented to and approved by the court.

With regard to the said attachment of the defendant's right
35 to repurchase the hacienda San Jose, the period of redemption is suspended until such time as this judgment becomes final, it being understood that such suspension shall date from the tenth of May last."

(*h*) That after many exertions on the part of the defendant, Doña Romana Gauson, widow of Vega, the objector herein, the receiver, Juan D. Pomar, after considerable and wilful delay filed on the Court of First Instance of this province the accounts of the sugar produced by the cane placed in his charge by reason of the foreclosure proceedings and the attachments issued in the second action (for greater clearness in future we shall call the first No. 85 and the second No. 249) and on the 22d of September of the year 1909, the honorable judge of the Court of First Instance of the Province of Occidental Negros, Philippine Islands, rendered judgment based upon those accounts and from this judgment the said Juan D. Pomar appealed; that up to the present time this appeal has been neither heard nor decided by the Honorable Supreme Court of the Philippine Islands.

(*i*) That up to the present time the attachment levied at the instance of the petitioner herein on the right of the objector to redeem the hacienda San Jose or Subongcogon has not been set aside or otherwise released, as the said right of redemption was attached as a result of the said action No. 249.

(*j*) The objector, Doña Romana Gauzon, widow of Vega has been and is now ready to make use of her right to redeem the said hacienda as soon as the attachment levied upon the same is released or set aside.

36 (*k*) That the objector has been informed, and she believed her information to be correct, and therefore alleges that on February 2, 1910, and in the pueblo of Iloilo in the Province of the same name, Don Manuel Lopez, as ex-sheriff of the Province of Occidental Negros, gave the Compañia General de Tabacos de Filipinas a final deed of sale of the said hacienda "San Jose" or "Subongcogon."

(*l*) That said final sale executed by the said Manuel Lopez as ex-sheriff of the Province of Occidental Negros, Philippine Islands is void and of no value inasmuch as the objector still has the right to redeem the said property.

(*m*) That up to the present time in civil case No. 85 no final record of the action has been made, which record should contain the petition and other pleadings, the judgment, orders, and the proceedings had in compliance with the order of sale, the order confirming it, the name of the purchaser and the description of the property which he bought.

For all of the foregoing, the objector respectfully prays the honorable Court to deny the title applied for by the Compañia General de Tabacos de Filipinas to the hacienda "San Jose" or "Subongcogon", unless such title be granted with the express reservation that the objector Doña Romana Gauzon, widow of Vega, has the right to redeem or repurchase the same in conformity with the terms of the judgment entered by the Court of First Instance of the Province of Occidental Negros, Philippine Islands, which judgment was affirmed by the Honorable Supreme Court of the Philippine Islands

37 in civil case No. 249; that the objector Doña Romana Gauzon, widow of Vega, has the right to redeem or repurchase the hacienda San Jose or Subongcogon when the attachment levied upon the said right has been released or set aside, and so long as the period within which such right should be exercised as appears in the judgment rendered in case No. 249 has not elapsed, and that the court declare that the hacienda "San Jose" or "Subongcogon" is in custodia legis, for the reason that it is still in the hands of the receiver Don Juan D. Pomar, who has not received any orders from the Court of First Instance of this Province, which appointed him, to turn over said property to the Compañia General de Tabacos de Filipinas, nor to any person in the name of said company, and that the court further declare that neither the sheriff of this province nor any of his deputies has turned over said property to the said Compañia General de Tabacos de Filipinas or to any other person in the name thereof.

That the court make a special finding that the final deed of sale executed by Manuel Lopez, as ex-sheriff of the Province of Occidental Negros, Philippine Islands, on February 2 of this year, in Iloilo, is null and void and that the inscription of the said instrument in the registry of property of this province is also null and

void; that up to the present time the Court of First Instance of this province has not made any final record of the foreclosure proceedings brought by the Compañia General de Tabacos de Filipinas against the objector herein, by reason of which the hacienda "San Jose" or "Subongcogon" was sold, in which record should
38 appear the petition and other pleadings, the judgment, orders and proceedings had in compliance with the order of sale, the order confirming it, name of the purchaser and a description of the property purchased.

San Carlos, January 6, 1911.

(Sgd.) A. P. SEVA,
Attorney for the Objector.

I, Romana Gauzon, widow of Vega, being duly sworn, set forth and declare: That I am the objector in the above-entitled proceedings; that I have read the foregoing objection and that everything alleged therein is true and correct.

San Carlos, January 6, 1911.

(Sgd.) ROMANA GAUZON,
Widow of Vega.

(Sworn to before notary public, January 6, 1911.)

(Here follows original of Exhibit C, a copy of which marked Exhibit C also is hereinbefore set out.)

39 EXHIBIT F, PETITIONER.

First. Folio 76. Book 1, stub book of the municipality of Calatrava. Property No. 18. I certify that at page 5 of provisional Vol. 3 of the municipality of Calatrava there is an entry which reads as follows: Annotation letter A; rural; land situated in the sitio of Subongcogon, barrio of San Carlos, within the jurisdiction of the pueblo of Calatrava. Bounded on the North by state forest lands, the river Andong and on the other side of this river land of Don Roberto Masicampo; on the East by the said river Andong and on the opposite side the lands of Don Roberto Masicampo, government mangrove swamps and the beach; on the South by said government mangrove swamps, the river Gigalaman and on the other side of this river lands applied for by Don Leon Vega and those of Don Victor Visitación, and on the West by the said River Gilamonan and on the opposite side the lands of Don Victor Visitación and the above mentioned forest lands belonging to the state. It measures 116 quiñones, 4 balitas, 9 loanes and 55 square brazas, equal to 61 hectares, 33 ares and 82 centares. Its value is 3,722 pesos and 71 centimos. There appears to be no charge or incumbrance whatsoever thereon. Doña Romana Yanson y Catalvas, widow of Vega, 35 years of age, agriculturist and domiciled in the pueblo of Calatrava, applied for the composition of this property with the State, and by a decree of the Dirección General de Administración Civil

of these Islands dated January 27, 1892, the property was gratuitously adjudicated to her, the corresponding title deed having
40 been issued by the Director General Don Angel Aviles y Marino in Manila on the 26th of December, 1894, the applicant first having paid the sum of 372 pesos and 27 centimos which represents ten per cent of its assessed valuation; this title was registered in the office of the Inspector General de Montes and numbered 1570 on the date of its issue and in the politico military government of this province with the number 1191 at the back of folio 349 in the corresponding book on the 26th of March, 1895. Doña Romana Yanson y Catalvas, widow of Vega, registered the ownership of this property which she acquired by composition with the State. All the foregoing appears in the title deed to the property, which has been inspected and which was presented in this registry at 10:30 a. m. on the 28th instant, according to the entry No. 1887, folio 19, 28th provisional volume of the Diario. The foregoing agrees with the document to which I refer and as I am unable to make the corresponding entry by reason of the lack of the old indexes I sign the present notice (anotación preventiva) in Bacolod, March 30, 1905. Fees 7.50 pesos. Tariff No. 7. Robustiano F. Herreros. This agrees with the entry to which I refer and in compliance with the provisions of articles 283 and 285 of the General Regulations I transfer the present annotation in Bacolod, September 22, 1900. (Sgd.) Manuel Lopez. In the margin there is a note which reads: The attached annotation is converted into a first inscription on account of the lack of the old indexes under letter A. Bacolod, September 22, 1900. (Sgd.) Lopez.

41 Second. Folio 77. Volume I, stub book Calatrava. Property number 18. Inscription 2. Rural. Land situated in the sitio called Subongcogon, barrio of San Carlos, within the jurisdiction of the pueblo of Calatrava, the description of which appears in the preceding preventive annotation, now first inscription, and is the same as that which is made in the title deed now presented. There appears to be no charge or incumbrance thereon. Doña Romana Yanson y Catalvas is the owner of this property, as appears in the above-mentioned first inscription and voluntarily mortgages it in guarantee of the payment of the sum of 11,209 pesos which she owes in favor of Don Lazaro Mota y Ayo, of legal age, a Spaniard, married, agriculturist and resident of Iloilo, which amount the debtor acknowledges to have received from the latter before executing the instrument which is herein registered. Don Lazaro Mota y Ayo registers his mortgage right, the parties having executed the contract with the following conditions: The debtor promises to pay the amount mentioned in Iloilo or in the domicile of the said Sr. Mota y Ayo within the period of two years counted from the date of the instrument now being registered, without interest or profit of any sort. Second: that the store house of strong materials, twelve horse power engine, furnace and the property described of which her Hacienda San Jose is composed will respond for the said debt or credit of 11,209 pesos, legal interest and the loss and damages and payment

of costs which may be imposed if the creditor Mota y Ayo is
42 obliged to resort to the courts to collect. Third: It is hereby covenanted by both parties that if Sra. Yanson is unable to pay or settle her debt of 11,209 pesos to Sr. Lazaro Mota y Ayo at the termination of said period of two years that the said hacienda will be sold in public auction, and from the proceeds of said sale the said debt of 11,209 pesos shall be paid; if there is any balance it shall be returned to the owner of the property, Romana Yanson. All the foregoing appears in the instrument of loan and mortgage of rural property executed by Doña Romana Yanson y Catalvas in favor of Don Lazaro Mota y Ayo in Iloilo on the 20th of July of this year before the notary public Don Gregorio Yulo y Regalado, the first copy of which was presented in this registry at ten o'clock this morning, as appears in entry No. 294 of Volume 5, provisional book of the Diario. The foregoing agreeing with the document to which I refer, I sign these presents in Bacolod, September 22, 1900. (Signed.) Manuel Lopez.

Third. At the back of folio 77 of the same volume. Property No. 18. Third inscription. Rural property. Property situated in the sitio of Subongcogon, barrio of San Carlos, within the jurisdiction of the pueblo of Calatrava, which description appears in the first inscription, property of this number, to be found at folio 76 of this volume and is the same as that made in the title deed now presented.

It appears to be charged with a voluntary mortgage consti-
43 tuted in favor of Don Lazaro Mota y Ayo to respond for the payment of the sum of 11,209 pesos, as appears in the preceding second inscription of this property. Doña Romana Yanson y Catalvas, of age, a resident of San Carlos, is the owner of this property, according to the first inscription above-mentioned, and newly constitutes another voluntary mortgage in favor of Don Lazaro Mota y Ayo, of legal age, married, a Spaniard, agriculturist and resident of Iloilo, in order to guarantee the payment of the sum of 4,177 pesos and 20 centimos which this gentlemen delivered to her in the act of executing the instrument which is now being registered as a loan. Don Lazaro Mota y Ayo registers his mortgage right, having executed the contract with the following conditions: First, the debtor undertakes to pay to the creditor the said sum of 4,177 pesos and 20 centimos in addition to the 11,209 pesos which appears in the second inscription of this property, making a total of 15,387 pesos, within the period of two years counted from the 20th of July of this year, in Iloilo, in the domicile of the said gentleman without interest or profit whatever. Second: That the warehouse of strong materials, twelve horse power engine, a furnace which is on the property and the property itself will answer for the new debt or credit of 4,177.20 pesos as well as the 11,209 pesos mentioned in the second inscription above-referred to, for legal interest and for the loss and damage and payment of costs which may afterwards be imposed if the creditor Sr. Mota y Ayo is obliged to resort to the court to collect.

44 Third: If Sra. Romana Yanson is unable to pay or to settle her debt of 15,386 pesos and 20 centimos to the creditor Mota y Ayo within the period of two years counted from the 20th of July

of this year, both parties agree that the said hacienda shall be put up at public sale and from the proceeds thereof shall be paid the said debt of 15,386 pesos and 20 centimos; if there is any balance it shall be returned to the owner of the property, Sra. Romana Yanson, the property being valued at 150,000 pesos which will be the upset price in case of a sale. Fourth: Both parties agree that all proceedings which may arise by failure to comply with the terms agreed upon shall be had in the city of Iloilo. All the foregoing appears in an instrument increasing the mortgage credit executed by Don Lazaro Mota y Ayo in favor of Doña Romana Yanson y Catalbas in Iloilo on the 8th instant before the notary public Don Gregorio Yulo y Regalado the original copy of which was filed in the registry at 11 o'clock this morning according to the entry No. 318 of the fifth provisional book. All of the foregoing agreeing with the document to which I refer, I sign these presents in Bacolod, this 11th day of October, 1900. (Sgd.) Manuel Lopez.

Fourth. At the back of folio 78 of the same volume; property No. 18. Fourth inscription. Rural. Hacienda San Jose, situated in the sitio of Subongcogon, barrio of San Carlos, pueblo of Calatrava, in the western district of the Islands of Negros; measuring
45 465 hectares, 33 ares and 82 centares; bounded on the north by government forest land, the river Andong, and on the other side of this river lands belonging to Don Roberto Masicampo; on the east, the same river Andong and on the opposite side of this river, lands belonging to the same Don Roberto Masicampo, government mangrove swamps and the beach; on the south by said mangrove swamps and the beach, other government mangrove swamps, the river Gigalaman and on the other side of this river lands applied for by Don Leon Vega and those of Don Victor Visitacion; and on the west the said river Gigalaman and on the opposite side the lands of Don Victor Visitacion and the above-mentioned government forest lands; with a storehouse of strong materials with nipa roof and a twelve horse power engine, trade mark "Key" and a furnace; this property is assessed at 50 pesos, Mexican currency, by common agreement between the creditors and the debtor. Doña Romana Ganzon y Catalbas, widow, property owner, 41 years of age, a native of the Villa de Arrevelo, province of Iloilo, a resident of San Carlos of this province, and Luchsinger and Company of Iloilo, represented by their managing partner Don Samuel Eduardo Luchsinger y Caballero, a Swiss, 29 years of age, married, merchant, resident of Iloilo, who, in support of his representation, presents the articles of partnership executed in Iloilo on the 22d of May, 1897, before the then notary public of that locality Don Andres Pastor Santana under the number 162 of his register of that year. Said Doña Romana
46 Ganzon y Catalbas and the representative of Messrs. Luchsinger & Company appeared before the notary public of Iloilo on the 16th of August last to execute the instrument in which the said Doña Romana Ganzon y Catalbas acknowledged herself to be in debt to the said Messrs. Luchsinger & Company in the sum of 8,875 pesos, the payment of which must be made on January 31, 1902. Messrs. Luchsinger & Company have further allowed to Doña Domana

Ganzon y Catalbas a credit of 8,000 pesos which is placed at her disposition in the following manner: P1,500 immediately after the execution of the instrument; P1,000 during the month of September; P3,000 during the month of October; P1,000 during the month of November; and P1,500 during the month of December of the present year, making a total of P8,000, Mexican currency, the amount of the credit so allowed. Doña Romana furthermore undertakes to pay interest at the rate of P80 per month or part of a month from the date of the execution of the instrument and also to sell to the said Luchsinger & Company 10,000 piculs of sugar from the next crop, the said Doña Romana allowing Luchsinger & Company 2½ percent of the total amount of the sugar sold, by way of commission. The 8,865 pesos, Mexican currency, which Doña Romana acknowledges to be owing to the said Luchsinger & Company as being the value of the tramway materials ordered by cable from Germany for account of Doña Romana by Luchsinger & Company will be paid on the 31st of January, 1902, at the offices of Messrs. Luchsinger & Co. at Iloilo, and the credit of P8,000 granted her will be
47 paid in the same manner on the 31st day of March, 1902. The sugar sold will be delivered in the months of December, January, February and March at the rate of 2,500 piculs each month, will be paid for at the current market prices at the day of each delivery, Doña Romana to pay carriage on the lorchas or steamboats which carry the sugar and Doña Romana will secure from Messrs. Luchsinger & Company have further allowed to Doña Romana and other supplies as the hacienda may need. In order to guarantee the fulfillment of the contract Doña Romana especially and particularly mortgages the described property with all of its appurtenancies, which property is charged with a mortgage of 11,209 pesos, Mexican currency, in favor of Don Lazaro Mota y Ayo. Consequently the mortgage constituted in favor of Messrs. Luchsinger & Company is to be understood as being a second mortgage. All the foregoing duly appears in the instrument of loan and mortgage executed in Iloilo on the 16th of August last before the notary public Don Gregorio Yulo y Regalado, the original of which was filed in this registry at 10 o'clock this morning, as appears in the entry No. 568, folio 29, seventh volume. All of the foregoing agreeing in the opinion of the counselor-at-law with the document referred to, I sign these presents in Bacolod, this 2nd day of September, 1901. Fees $17.75. Tariff Nos. 1 and 7. Signed, Louis M. Lang, Treasurer of Occidental Negros, P. I. Signed, Vicente Franco, Attorney at Law.

48 Fifth. Folio 130 of the same book. Property No. 18. Fifth inscription. The foregoing mortgage inscription is totally cancelled by reason of Doña Ganzon y Catalbas having paid Messrs. Luchsinger & Company, creditor, the sum of P16,865, Mexican currency, the interest agreed upon and commission, which amounts the said Messrs. Luchsinger & Company declare and acknowledge to have received in the sum of P16,865, Mexican currency, the interest agreed upon and commission, which amounts said Messrs. Luchsinger & Company acknowledge and declare to have

received through their attorney-in-fact Señor Federico (some error in copy) in current coin to their entire satisfaction. All of the foregoing is set forth in the instrument acknowledging payment and cancelling the mortgage executed in the capital of Iloilo on the 5th of September last before the notary public thereof, Don Gregorio Yulo y Regalado, the original copy of which was filed in this registry at 9:30 a. m. on the 26th of September last, as appears in the entry No. 760, book 9, a copy of which instrument is filed in the bundle of documents of its class. All of the foregoing agreeing with the document to which I refer, I sign these presents in Bacolod this 10th day of October, 1902.

Sixth. At the back of folio 130 of the same volume. Property No. 18. Sixth inscription. Rural. Hacienda San Jose, situated in the sitio of Subangcogon, barrio of San Carlos, pueblo of Calatrava, a description of which appears in the preventive
49 annotation Letter A, now first inscription, appearing on folio 76 of this volume, which description is the same as that made in the title here presented. It appears to be charged with a voluntary mortgage constituted in favor of Don Lazaro Mota y Ayo to answer for the payment of the sum of 15,386 pesos and 20 centimos as appears in the second and third inscriptions to be found on folios 77 and the back of 77 of the said volume. Doña Romana Ganzon y Catalbas, widow, 41 years of age, property owner and resident of the pueblo of San Carlos, is the owner of this property as is stated in annotation letter A above cited. That by a public instrument executed in Iloilo on the 20th of July, 1900, Sr. Lazaro Mota y Ayo, married, 38 years of age, merchant and resident of the capital of Iloilo, loaned to Sra. Romana Ganzon y Catalbas the sum of 11,209 pesos, Mexican currency, repayable within the period of two years counted from the date of the execution of the said instrument without interest of any sort. And for the security and fulfillment of the said obligation or debt of 11,209 pesos, the debtor mortgages in favor of her creditor Sr. Mota, the property of that number, together with a storehouse of strong materials with nipa roof, an engine, trade-mark "Key," of twelve horse-power, and a furnace. That by another instrument executed before the same notary of the said district on October 8th, 1900, the contracting parties agreed to increase said mortgage credit of 11,209 pesos by a further sum of 4,177 pesos and 20 centimos, which Sr.
50 Mota delivered at the time to the said Sra. Ganzon in current coin and to her entire satisfaction, whereupon she executed in his favor the corresponding receipt, which amount added to that of 11,209 pesos of the first credit set out above makes a total of 15,387 pesos and 20 centimos which amount the said Sra. Ganzon acknowledges to be owing to the said Sr. Mota whom she promised to pay within the period of two years, counted from July 20, 1900, either in Iloilo or at the domicile of the said creditor Sr. Mota without any interest whatsoever; the mortgage on the hacienda above described being left in force to secure the payment of the said credit, both of the first one described as well as the later increase, other conditions having been agreed on and set forth in

the said instrument. That Sra. Romana Ganzon having again applied to Sr. Lazaro Mota to increase the credit mentioned in the preceding clauses by another loan in order to enable her to pay the expenses of harvesting, cultivating, and other necessities of the said hacienda San Jose, and as the said Sr. Mota, taking her petition into consideration as well as the agricultural reverses of the last two years, accedes to the request and increases the credit referred to by the further amount of 6,037 pesos and 73 centimos, which he has delivered to and which the Sra. Romana Ganzon receives in this act to her entire satisfaction; this amount or new credit of 6,037 pesos and 73 centimos, added to that of 15,386 pesos and 30 centimos, make a total of 21,423 pesos and 93 centimos, which amount Sra. Romana Ganzon y Catalbas
51 acknowledges herself to be owing to the said Sr. Mota and undertakes to pay within the period of two years counting from the 20th of July of the present year, in the domicile of the creditor to whom she gives the necessary security. In order to guarantee the payment of the whole of said sum of 21,423 pesos and 93 centimos, the debtor Sra. Romana Ganzon y Catalbas especially and particularly mortgages the hacienda San Jose, as well as two furnaces and an estate house built of wood with a nipa roof thereon, and other buildings and machinery set forth in the mortgage instrument, the value of said hacienda together with its buildings, furnaces and machinery being the sum of 70,000 pesos according to the statements of the interested parties and therefore they expressly renounce any new valuation or proceedings for the purpose, the two first instruments dated July 20 and October 8 of 1900 being consequently cancelled by the present instrument and the conditions and terms set forth therein being of no further legal value or effect. That the said warehouse, estate house, furnaces, machinery and land described and which constitute the hacienda San Jose, will respond for entire debt of 21,423 pesos and 93 centimos, and legal interest, damages and costs which may be occasioned if the creditor Sr. Mota y Ayo is obliged to resort to the courts in order to collect his money. That Don Lazaro Mota y Ayo registers his mortgage right, the contract having been executed with a condition that if Sra. Romana Ganzon is unable
52 to pay or settle her debt of 21,423 pesos and 93 centimos owing to the creditor Sr. Lazaro Mota y Ayo before July 20, 1904, both parties agree that the said hacienda shall be sold at public auction that the whole of the said debt of 21,423 pesos and 93 centimos shall be paid from the proceeds thereof, and that any remainder shall be returned to the owner of the property, that is to say, the said Sra. Ganzon. Both parties agree on the capital of Iloilo and courts of the same as the places where proceedings shall be had in case of non-compliance with the terms of this instrument, and they expressly renounce all other courts and domicile. Sra. Romana Ganzon y Catalbas being fully aware of the instrument here registered, accepts it in all of its parts, effects, and consequences, as being what was covenanted and agreed upon. All of the foregoing appears in the instrument increasing the mort-

gage debt executed in the city of Iloilo on September 6th of the present year before the notary public thereof, Don Gregorio Yulo y Regalado, the original copy of which was filed in this registry at 9:30 of the morning of the 26th of the same month and year of its execution, according to the entry made on presentation, No. 761, 9th volume. And whereas all of the foregoing agrees with the document to which I refer, I sign these presents in Bacolod, October 10, 1902.

Seventh. Folio 133, Book 1, stub book of Calatrava. Property No. 18. Seventh inscription. Rural, Hacienda San Jose, situated in the sitio of Subongcogon, within the jurisdiction of the
53 pueblo of Calatrava, now San Carlos, a description of which appears in the preventative annotation letter A, now first inscription, and is the same as that contained in the title here presented. Various mortgages appear as constituted in favor of Sr. Lazaro Mota y Ayo. Don Joaquin Sierra y Rollan, 31 years of age, a Spaniard unmarried, agriculturist and resident of San Carlos, in behalf of and as attorney-in-fact of Sra. Romana Yanson y Catalbas, of legal age, widow of Vega, property owner and also resident of San Carlos, is the owner of the said property as duly appears in the annotation letter A above-cited, and in consideration of the sum of 34,000 pesos which she declares and acknowledges to have received from the Compañía General de Tabacos de Filipinas, represented by Don Eduardo Cedrun Fernan Reguera on former occasions in various amounts and at 9 per cent interest per annum from the dates on which the respective amounts were received, has proposed to the Iloilo representative of the Compañía General de Tabacos de Filipines, Don Edurado Cedrun, that the credit be increased up to 41,000 pesos, the latter acceded to her request and she has agreed with the company through the said representative as follows. First: That they approved, agreed to, and ratified the former contract, as a result of which, without interest, she acknowledges herself to be in debt to the Compañía General de Tabacos in Iloilo in the sum of 34,000 pesos. Second: Don Joaquin Sierra, in the name of the debtor, obligates himself and undertakes to deliver to the Compañía General de
54 Tabacos in Iloilo all the sugar crops produced by this hacienda, estimated to be at least 14,000 piculs, approximately, which sugar will be delivered at the Iloilo market at the end of next June, 1904, which period may be extended under the same conditions if the creditor company so agrees. Third: Don Joaquin Sierra, in the name of the debtor, will pay to the Compañía General de Tabacos de Filipinas, and in its name to its representative in Iloilo, 9 per cent per annum of the amounts which he may receive, counting from each of the dates on which delivery has been made, and indicates as date of the liquidation of the whole of the principal and interest the 30th day of June next or at such other date as may be indicated by the company in its extension; it is clearly understood that unpaid interests will continue to to be owed until the date on which the principal is wholly repaid. Fourth: That Don Joaquin Sierra, in the name of the debtor,

obligates himself and undertakes to send the sugar to Iloilo in the vessels designated by the creditor company if it suits the latter to send them for the purpose; otherwise, in the name of the debtor and in agreement with the said company, he will dispose of the sugar in Iloilo; if the sugar is loaded on vessels belonging to the company the company will charge for freight according to the prevailing rates which payment he undertakes to make if the sugar is carried in vessels obtained by him in the name of the debtor by reason of the company not furnishing them, and he will
55 pay the freight. Other expenses of unlading, repacking, drying, and all other expenses connected with the shipments and also maritime risks shall be all paid by him. Fifth: That Don Joaquin Sierra, in the name of the debtor, agrees that the creditor company will have preference in the purchase of the sugar, at prevailing rates, shipped by him under the obligation which he contracts by these presents, and if the company does not accept it, it will be sold on commission for and on account of the said company. The creditor company is especially authorized by him to sell a part, or the whole of the sugar, as may be considered convenient. Sixth: That Don Joaquin Sierra, in the name of the debtor, if he deems proper will have the right to wait for better prices, in which case he will store the sugar in warehouses indicated by the company or in other warehouses, and he will pay for storage and insurance to the said company one per cent for each one of these concepts per month, or fraction of a month, for each picul of sugar, but the sugar can only be so stored until the thirtieth of June, 1904, or until such date as may be set, on which date all the sugar must be sold, accounts settled, and the obligations undertaken by virtue of the contract fulfilled. Seventh: That Don Joaquin Sierra, in the name of the debtor, shall at all times pay to the creditor company one per cent as sales commission on the gross total of sugar delivered and sold. Eighth: That Don Joaquin Sierra, in the name of the debtor, undertakes to furnish me from the
56 supply stores of the creditor company all supplies needed, whether machinery, tools, comestibles, sacks, rattan, or other necessities required on the hacienda referred to. Ninth: Don Eduardo Cedrun, in the name and representation of the Compañía General de Tabacos de Filipinas, will turn over to the vendor sums up to the amount of P41,000 of which she has already received P34,000, it being understood that the remaining P7,000 will be paid to her as the sugar is delivered in the warehouses of the company in Iloilo at the rate of one peso per picul so delivered. Tenth: Don Eduardo Cedrun Fernan Reguerra, in the name of the creditor company, reserves to him-self the right when and whenever it suits his convenience to exercise it to place an agent upon the estate who shall be paid such per diems and emoluments as he shall fix and which shall be a charge against the debtor exclusively. Eleventh: Don Joaquin Sierra, in the name of the debtor, agrees to the foregoing clause in all of its parts and authorizes the company whenever it considers it necessary to appoint an agent with

all of the powers proper to his office and which the company sees proper to confer upon him. Twelfth: Don Joaquin Sierra, in the name of the debtor, for the better security and the rigid compliance with the obligations he has undertaken in this contract, transfers and sells to the creditor company all of the crops of the said hacienda, making delivery of them by manu longa to the creditor company and transferring the full dominion over them until he pays the debt in the manner and under the conditions set
57 forth; if he does not so do he authorizes the creditor company to take possession of the said crops, and the company may sell or store them, to which end by virtue of this document he confers full and special powers without limitation of any sort and undertakes to abide by any action taken by said company and to make no protest whatsoever. Thirteenth: Don Joaquin Sierra, in the name of the debtor, obligates himself and undertakes to pay to the creditor company by way of a fine the sum of two thousand pesos, in the event that the company is obliged to resort to the courts to enforce any of the obligations undertaken by him in this contract. Fourteenth: Don Joaquin Sierra, in the name of the debtor, in guarantee of the credit allowed him and in fulfillment of all the foregoing, constitutes a special and particular mortgage on the property of this number. It is understood, nevertheless, that if Sr. Joaquin Sierra, in the name of Romana Yanson y Catalbas, or she herself, pays or causes to be paid to the said company the sum of P41,000 on the 30th of June, 1904, or the day to which it may be extended, together with the interests agreed upon in the present instrument, the mortgage will be cancelled and shall be void and valueless, otherwise it shall remain in full force and effect and may be enforced according to law. Don Eduardo Cedrun Fernan Reguerra, in the name and representation of the Compañía General de Tabacos de Filipinas, registers his mortgage rights having celebrated the contract under the conditions above-mentioned.
58 All of the foregoing appears in the mortgage instrument certified to before the notary of the city of Ilo'lo Don Federico Soler on the sixth of January of the present year, which document was presented in this registry at 11 o'clock on the morning of the 18th day of the same month and year, as appears from entry No. 1066 of the third volume of the Diario. And as all of the foregoing agrees with the documents to which I refer, I sign these presents in Bacolod, this 11th day of February, 1904. Sgd. Pedro A. Casanabe, Treasurer, Occidental Negros, P. I.

Eighth. Folio 148 of the same property No. 18. Eighth inscription. Rural. Hacienda San Jose, situated in the sitio of Subongcogon, within the jurisdiction of the pueblo of Calatrava, the description of which appears in the preventative annotation letter A which was made by reason of the lack of the old indexes, now first inscription, found at folio 76 of this volume and is the same as that contained in the title deed now presented. There first appears as constituted in favor of Lazaro Mota y Ayo for the sum of P21,423 pesos and 93 centimos a first mortgage, according to the second, third and sixth inscriptions of this property at folios 77 and the back of

77 of this volume, and a second mortgage in favor of the Compañía General de Tabacos de Filipinas for the sum of P41,000 according to the foregoing seventh inscription. The said Señor Lazaro Mota y Ayo, 39 years of age, married, agriculturist, resident of Bais, Eastern district of the Islands of Negros, who acquired said mortgage credit as above set forth against Doña Romana Ganzon y Catalbas, owner of the said property according to said annotation letter A, for the amount above-mentioned, cedes and transfers all of his rights, without any reservation whatever, in this property to the Compañía General de Tabacos de Filipinas for the sum of 21,423 pesos and 93 centavos, conant, and subrogates the said company in his place and rights in order that it may collect from the said debtor Sra. Romana Ganzon; of this amount Sr. Mota declares that he has received from said company 13,550 pesos and 92 cents, conant, and the remaining 7,873 pesos and 1 cent, conant, in addition to the sum of 524 pesos and 81 cents which represents the ten per cent agreed upon between the parties, which amounts added together equal the sum of 8,397 pesos and 82 cents, conant, the Compañía General de Tabacos undertakes to pay to the widow and heirs of the late Don Jose Saavedra y Poderi on the 30th day of May, 1905, after notice from Sr. Mota of the sale of the hacienda Nuestra Señora de la Paz made by Señora Generosa and heirs in favor of the cessionary. That both the 13,550 pesos and 92 cents, conant, which Sr. Mota acknowledges to have received from the Compañía General de Tabacos de Filipinas as well as the 8,397 pesos and 82 cents, conant, which the said Compañía General de Tabacos has undertaken to pay for the widow and heirs of the late Don Jose Saavedra y Poderi will complete the payment, wherefore the mortgage credit against Doña Romana Ganzon is transferred in favor of said Compañía General de Tabacos. It is covenanted and agreed that the Compañía General de Tabacos, as the owner of said credit, may exercise its right to collect it from the said debtor, or transfer it to any other person at its pleasure, and Sr. Lazaro Mota undertakes to advise Doña Romana Ganzon of the present transfer, otherwise the said Sr. Mota will be responsible for any damage which may result to the said Compañía Tabacalera. Furthermore, Sr. Mota has agreed with the debtor Doña Romana Ganzon that if the company should grant her any extension of time for the repayment of the obligation, whose rights by these presents are transferred thereto by Sr. Mota, the said lady will pay to the said company interest at the rate of ten per cent per annum; otherwise the said Sr. Mota guarantees the payment of the sum of 500 pesos and 81 cents which, as interest, the company promises to pay to Sra. Generosa, widow of Saavedra, and her heirs. That on the 21st day of July, 1904, before the notary Don Gregorio Yulo y Regalado, Don Lazaro Mota y Ayo called upon the debtor Doña Romana Ganzon for the payment of the entire amount of her debt of 21,423 pesos and 93 cents, because the period set for its payment had expired, and Sr. Mota desired to convert his capital into Philippine currency at the commercial rate of exchange of one hundred and

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eight and a half for one peso conant according to bank transactions in the capital of Iloilo; the said Sra. Romana Ganzon in turn stated
to the Sr. Mota that she could not pay the said amount be-
61 cause she had no money at that moment and she begged him
to give her an extension of one month without prejudice to paying the interest, difference of exchange of local currency into Philippine currency, and other loss and damage which she might occasion to Sr. Mota. That on the 22nd day of August, 1904, before the notary public Don Gregorio Yulo, the said Sr. Mota called upon the said notary in order that he might in his turn call upon Sra. Ganzon for the said amount; that the notary did so and the debtor repeated the statements given above; that as a result of the said demands made by Sr. Mota, the said credit was not paid, transferred nor charged with any incumbrance whatsoever. The Compañía General de Tabacos de Filipinas through its Iloilo representative Don Luis Gonzaga Espoy y Machado, a native of Barcelona, Spain, 47 years of age, married, registers his rights in the said property ceded and transferred by Lazaro Mota y Ayo. All of the foregoing appears in the document subscribed by said Sr. Don Lazaro Mota y Ato and Sr. Don Luis Gonzaga Espoy y Machado, in Iloilo on the 30th day of September, 1904, and certified to before the notary public Sr. Gregorio Yulo in the same town on the same day, month and year, which document was presented in this registry at 10 o'clock a. m. of the 6th day of February of this year according to the entry No. 252, folio 126, Volume one of the Diario. And as the foregoing agrees with
the said instrument I sign these presents in Bacolod on the
62 23rd day of September, 1905. Sgd. Dionisio Mapa, Registrar, Occidental Negros, P. I. Fees, P18.00, Schedule No. 7.

Ninth. Folio 150 of the same volume. Property No. 18. Ninth inscription. Rural. Hacienda San Jose, situated in the sitio of Subongcogon, within the jurisdiction of the pueblo of Calatrava, the description of which appears in the preventative annotation letter A taken on account of the lack of old indexes, now first inscription, to be seen at folio 76 of this volume, and which is the same as that contained in the title deed here presented. It appears to be incumbered with two mortgages, the first constituted in favor of Lazaro Mota y Ayo for the sum of 21,423 pesos and 93 cents and transferred by the debtor to the Compañía General de Tabacos de Filipinas, according to the second, third, sixth, and eighth inscriptions to be seen at folios 77, the back of folio 77, and the back of 130, and 148 of this volume; the second mortgage was constituted by the owner of this property, Doña Romana Ganzon y Catalbas in favor of the Compañía General de Tabacos de Filipinas in the sum of 41,000 pesos, according to the seventh inscription of this property at folio 133 of this volume. Doña Romana Ganzon y Catalbas, widow of Vega, of legal age, occupied in the labors proper to her sex, and Luis G. Espoy y Machado, 47 years of age, a native of Barcelona, Spain, manager for the Compañía General de Tabacos de Filipinas in Iloilo, married, executed a
public document in the municipality of Iloilo on the 10th of
63 December, 1904, certified to the same before the Notary Public Don Gregorio Yulo in the said municipality of Iloilo on

the same date, the first in her own right, and the second as attorney-in fact and representative of the Compañía General de Tabacos de Filipinas in Iloilo. In this document Doña Romana Ganzon y Catalbas, widow of Vega, sets forth that she has not paid the said debt of P21,423 and 93 cents, conant, to her creditor, Don Lazaro Mota y Ayo, which debt was transferred by the latter to the Compañía General de Tabacos de Filipinas and that she has likewise not paid the P31,195.99, conant, which she owes to the Compañía General de Tabacos de Filipinas as a balance of the amounts received by her from the said Compañía General de Tabacos de Filipinaas, and that likewise she has not paid the interest of ten per cent on her debt to Sr. Mota, which interest amounts to the sum of P422.61, and that these three amounts total the sum of P53,042.53, conant, as appears from the liquidation of accounts made by the parties on December 10, 1904; the said debtor assents thereto and gives a receipt to the creditor company for its protection. The debtor Doña Romana Ganzon acknowledges to have received all these sums from the said company and the amount of the mortgage credit transferred to the said company, which sums total the said amount of P53 042.53, conant, with interest at ten per cent per annum from the date of the said liquidation of December 10, 1904; said interest shall be paid at
64 the end of the fiscal year of the said firm, which date is at present the 31st of December of each year. If on the 31st of December of each year the debtor shall not have paid the interest due, the said interest shall form part of the debt, and in consequence the said amount shall bear interest. The debtor recognizes the right of the company to transfer to a third person all rights and actions which by this contract the company acquires. In case the Compañía General de Tabacos de Filipinas shall file an action against the debtor for the nonfulfillment of the obligation contracted by Doña Romana Ganzon y Catalbas, widow of Vega, the latter undertakes to pay for expenses, costs and lawyers' fees, the amount of P6,000, conant, and the mortgage in favor of the company shall be considered as extended to include that amount. The term fixed for this contract is June 30, 1905, which may be extended for another year at the will of the creditor company, on which date the principal of the debt and interest earned must be paid. Sra. Romana Ganzon y Catalbas declares that this property is free of all other incumbrances; that she constitutes a mortgage on this property in favor of the said Compañía General de Tabacos de Filipinas and includes in the said mortgage the improvements on the said property, more especially a storehouse of strong materials with a nipa roof, a twelve horse power engine marked "Key," a furnace with a set of sugar boilers, an estate house of mixed materials, and all the carabaos on the estate which are not less than 14 in number.
Don Louis G. Espoy, in his capacity as representative, cancels
65 the transfer of the mortgage on the hacienda described which was made by the said Mota in favor of the Compañía General de Tabacos de Filipinas. Both parties assess the value of this to be P60,000, conant, there being understood as included in this valua-

tion the appurtenancies of the said hacienda and both parties renounce further valuation and proceedings for that purpose. Sr. Luis G. Espoy y Machado registers the rights of the Compañía General de Tabacos de Filipinas in this property and the seventh inscription regarding the mortgage credit in favor of the said Compañía General de Tabacos shall be considered as amended by this present one. All of the foregoing appears in the said instrument subscribed by the said Sra. Romana Ganzon y Catalbas and Don Luis G. Espoy y Machado, which instrument was presented in this registry at ten o'clock a. m. of the 6th day of February of this year, according to entry No. 254, folio 128, Volume I of the Diario. And as all the foregoing agrees with the said instrument I sign these presents in Bacolod on this 23rd day of September, 1905. (Sgd.) Dionisio Mapa, Registrar, Occidental Negros, P. I.

Tenth. Folio 152 of the same book. Property No. 18. Tenth inscription. Rural. Sugar hacienda called San Jose in the sitio of Subongcogon, barrio of San Carlos, of what used to be the pueblo of Calatrava, the description of which appears in the first inscription, formerly annotation letter A, taken by reason of lack of old indexes, at page 76 of this volume and is the same as that contained in
66 the title deed here presented, the only difference beeing that in the latter it appears that the property is bounded on the East by other government mangrove swamps, the river Gigalaman, and on the other side of this river lands applied for by Leon Vega and those of Don Victor Visitacion; on the South the sea and on the West the said river Gigalaman, and on the opposite side of this river the lands of Don Victor Visitacion and the said government forest lands. The following property forms part of this hacienda: two steam engines, one of twelve horse power and the other of eight horse power, marked "K. E. I." and "Blai Kir Brothers," respectively, with their corresponding boilers; a warehouse of light materials with nipa roof; 387 lengths of tram rails, equal to 1,935 meters, and 3 switches, all half worn; 15 wagons in bad condition, a set of scales in good condition; a storehouse with galvanized iron roof; two furnaces with 12 sugar boilers and 2 extra ones, 20 workmen's dwelling houses of light materials; 1 corn mill; 16 plows marked "Urquijo;" 2 iron harrows; 14 boiler tubes for the large engine; 60 sheets of galvanized iron for locusts; and 23 worn spades. It appears to be charged with two mortgages, the first constituted in favor of Lazaro Mota in the sum of P25,423.93, which is transferred by the creditor to the Compañía General de Tabacos according to the second, third, sixth, and eighth inscriptions of this property on folios 77, the back of 77, the back of 130, and the back of 148 of this book; the second is constituted by the owner of this property,
67 Doña Romana Tanzon y Catalbas, in favor of the Compañía General de Tabacos for the sum of P41,000 according to the seventh inscription of this property entered on folio 133 of this volume and the ninth inscription at folio 150; the seventh inscription with regard to the mortgage of the said Compañía General de Tabacos is amended by the foregoing ninth inscription at folio 150

of this same volume. Romana Tanson y Catalbas, widow of Vega, appears to be the owner of this property according to the preventative annotation letter A, taken by reason of the lack of old indexes, at folio 76 of this volume, now first inscription. Sr. Manuel Lopez y Villanueva, governor and sheriff of the Province of Occidental Negros in the Tenth Judicial District, Philippine Islands, certifies that by virtue of a writ of execution issued out of the Court of First Instance of this province, in an action entitled Compañía General de Tabacos de Filipinas, plaintiff, vs. Romana Tanzon y Catalbas, widow of Vega, ordering the collection of the amount of P58,687.03, Philippine currency, in order to comply with the judgment rendered in said cause, together with interest of ten per cent per annum from the 15th of July, 1905, as well as the costs and the expenses of the execution, by means of the attachment and sale of the property enumerated in the said writ, on the 12th day of the present month I sold at public auction in accordance with the provisions of law applicable to the case the property of this number with its appurtenancies
68 to Sr. Manuel Cueto, married, of legal age, a resident of this city, representative of the plaintiff, Compañía General de Tabacos de Filipinas, for the sum of P64,326.92, Philippine currency, as the only bidder, which amount was applied to the satisfaction of the debt; this sale is subject to the right of redemption for the period of one year from the date of the certificate, in accordance with the provisions of law. The Compañía General de Tabacos de Filipinas registers its right of dominion over this property which it acquires by the sale at public auction made to secure the payment of the debt, under the condition of right of redemption set out above. All of the foregoing appears in the certificate of sale at public auction dated the 12th of the present month which was presented in this registry at 10:45 on the morning of the 15th instant according to the entry number 656, page 115, second volume of the Diario. And as the foregoing agrees with the document referred to, I sign these presents in Bacolod on the 19th day of September, 1906. Signed, Julius S. Reis, Registrar, Occidental Negros, P. I.

Eleventh. Folio 153, book 1 of Calatrava. Property No. 18. Annotation letter A. Rural property. Sugar hacienda called San Jose, situated in the sitio of Subongcogon, barrio of San Carlos, of what was formerly the pueblo of Calatrava, the description of which appears in the first inscription, formerly annotation letter A, property of the same number, entered at folio 76 of this volume. It agrees with that contained in the title deed here presented with the sole
69 diffrence that according to the latter the property is bounded on the east by the same river Andoog and on the other side of this river the lands of the said Roberto Masicampo, government mangrove swamps, the river Gigalaman, and on the other side of this river lands applied for by Don Leon Vega and others belonging to Don Victor Visitacion, and on the south by the sea. The following property forms part of this estate: 2 steam engines, one of 12 horse power and the other of 8 horse power, marked "K. E. I." and "Blai KI Brothers'," respectively, with their corresponding boilers; a warehouse of light materials in two parts with a nipa roof; 4 bagasse

storehouses of light materials with nipa roof; 387 lengths of tram rails equivalent to 1,935 meters, and 3 switches, all half worn; 15 wagons in bad condition; 1 set of scales in good condition; 1 warehouse with galvanized iron roof; 2 furnaces with 12 sugar boilers and 2 extra ones; 20 workmen's dwelling houses of light materials; 1 corn mill; 16 plows marked "Urquijo;" 2 iron harrows; 14 boiler tubes for the large engine; 60 sheets of smooth galvanized iron for locusts; and 23 worn spades. Doña Romana Ganzon, widow of Vega, has the right to redeem this property within the period of twelve months counted from the 12th day of September, 1906. An action having been filed in the Court of First Instance of the Province of Iloilo by the Compañía General de Tabacos de Filipinas, plaintiff, *vs.* Romana Ganzon, widow of Vega, defendant, in which the plaintiff declared under oath that the defendant owes it the
70 sum of P11,903.72 in addition to the agreed interest of 10 per cent and that the said defendant has disposed of part of her property and is about to dispose of other property with the intention of defrauding the plaintiff, her creditor; and the later having furnished the bond required by law, the Honorable Henry C. Bates, Judge of the Ninth District, on the 8th day of January of the present year, issued to the sheriff or any of his delegates of this Province of Occidental Negros, a writ of preliminary attachment against the real and personal property of the defendant for the amount of the demand and costs; by virtue of this writ Sr. Arturo Cuadra, deputy sheriff of this province, on the 15th instant attached the right of redemption of the defendant Romana Ganzon in the property of this number. All of the foregoing appears in the copy of the writ issued on the 8th of January of the present year by the Court of First Instance of the Province of Iloilo and in the notification subscribed in duplicate in this city on the 15th instant by Sr. Arturo Cuadra, deputy sheriff of this Province of Occidental Negros; these documents were presented in this registry at 10:35 o'clock on the morning of the 15th instant, as appears in the entry No. 748, page 175, of Volume 2 of the Diario, said writ and the duplicate of the notification being filed away with the proper bundle. All of the foregoing agreeing with the documents referred to, I sign this annotation in Bacolod this 19th day of February, 1907. (Sgd.) Julius S. Reis, Acting Registrar of Deeds, Province of Occidental Negros.

71 Twelfth. At the back of folio 154 of the same book. Property No. 18. Annotation letter B. The foregoing preventative annotation, letter A, registering the preliminary attachment of the right of redemption, is wholly cancelled for the reason that on the 9th day of March, 1907, the civil action No. 893, brought to recover the sum of P11,092.62, entitled Compañía General de Tabacos de Filipinas, plaintiff, *vs.* Romana Ganzon, widow of Vega, defendant, brought in the Court of First Instance of Iloilo, was dismissed on the petition of the plaintiff with costs in favor of the defendant. This is set forth in the copy of the certificate issued in Iloilo on March 9, 1907, by Sr. Licerio Casten Salazar, clerk of said court, and the notification of the said deputy sheriff of this province made in this

city on the 13th of March, 1907; the foregoing documents were presented in this registry at 7:30 o'clock on the morning of the 14th of March of the same year, as appears in the entry number 781, page 192, volume 2 of the Dairio, the said documents being filed away in their proper bundle. And as the foregoing agrees with the documents referred to, I issue these presents in Bacolod on the 1st day of April, 1907. (Sgd.) Paul Wulthrich, Acting Registrar of Deeds, Province of Occidental Negros.

Thirteenth. Back of folio 154 of the same volume. Property No. 68. Annotation letter C. Rural. Sugar hacienda called San Jose, situated in the sitio of Subongcogon, barrio of San Carlos, in what was formerly the pueblo of Calatrava, the description of which
72 appears in the first inscription, formerly annotation letter A, property of this number, entered at folio 76 of this volume; this description agrees with that made in the title deed here presented, with the sole difference that according to this latter it is bounded on the west by the same river Andoog and on the opposite side the lands of Roberto Masicampo, government mangrove swamps, the river Gigalaman, and on the other side of this river lands applied for by Don Leon Vega and those of Don Victor Visitacion, and on the south by the sea. The following property forms part of this estate: 2 steam engines, one of 12 horse power and the other of 8 horse power, marked "K. E. I." and "Blai Brothers'," respectively, together with their boilers; 1 storehouse of light materials in two parts with a nipa roof; 4 bagasse warehouses of light materials with nipa roof; 387 lengths of tram rails equivalent to 1,935 meters; and 3 switches, all half worn; 15 wagons in bad condition; 2 furnaces with 12 sugar boilers and 2 extra ones; 20 workmen's dwelling houses of light materials; 1 set of scales in good condition; 1 storehouse with galvanized iron roof; 1 corn mill; 16 plows marked "Urquijo;" 2 iron harrows; 14 boiler tubes belonging to the large engine; 60 sheets of smooth galvanized iron for locusts; and 23 worn spades. No incumbrance of any sort appears to be charged thereon. Doña Romana Ganzon, widow of Vega, has the right to redeem this property within the period of twelve months dated from September
12, 1906. An action having been commenced in the Court of
73 First Instance of this Province of Occidental Negros by the Compañía General de Tabacos de Filipinas, plaintiff, *vs.* Romana Ganzon, widow of Vega, defendant, in which the plaintiff has stated under oath that the defendant owes it the sum of P11,093.62, bearing interest until paid, and that the said defendant has disposed of part of her property and is about to dispose of other property with the intention of defrauding her creditor, the plaintiff, and the plaintiff having furnished the bond required by law in favor of the defendant, the Honorable Vicente Jocson Tad-y, Judge of the Tenth Judicial District, on the 11th of March of this year, issued a writ of preliminary attachment against the said real and personal property for the amount of the demand and costs; by virtue of this writ Sr. Arturo Cuadra, deputy sheriff of this province, on the 13th of March of the present year, proceeded to attach the right of redemption which the defendant Romana Ganzon possesses in the

property of this number, together with all the sugar cane on the hacienda. All of the foregoing appears in the order issued on March 11 of the present year by the Court of First Instance of this province and in the notification signed in duplicate in this city on the 13th day of the said month and year by Sr. Arturo Cuadra, deputy sheriff of the province of Occidental Negros, which documents were presented in this registry at 7:30 o'clock on the morning of the 14th of March of the present year as appears in entry No. 782, page 193, of the second volume of the Diario, the said order and the duplicate of the said notification having been filed with the proper bundle in the records of this office. And as all of the foregoing agrees with the documents referred to, I sign this present entry of the attachment in Bacolod this 1st day of April, 1907. (Sgd.) Paul Wulthrich, Acting Registrar of Deeds, Province of Occidental Negros.

74

I, Gabino Sepulveda, Fiscal and Registrar of Deeds of the Province of Occidental Negros, Philippine Islands, certify that the foregoing entries relate to the property which is described in the attached application of the Compañía de Tabacos de Filipinas, case No. 6303, and that they literally agree with those which appear in the volumes and folios and under the numbers cited and to which I refer. And for the purposes of the above-entitled proceedings, I issue and sign these presents in Bacolod this 10th day of May, 1910.

(Sgd.) GABINO SEPULVEDA,
Fiscal and Registrar of Deeds,
Occidental Negros, P. I.

(Stamp. Received March 22, 1910, 9:30 a. m. 591/180 and filed for registry.)

ILOILO, P. I., March 12, 1910.

To the Registrar of Deeds of the Province of Occidental Negros:

You are hereby notified in order to take action upon this information in accordance with section 20 of Act No. 496, section 7 of Act No. 1699, amending section 50 of said Act No. 496, and section 5 of Act. No. 1648, that on the 15th day of March, 1910, the undersigned presented to the Court of Land Registration in Manila an application for the registration under the Land Regulation Act of title to the following described property:

75

A parcel of land, situated in the municipality of San Carlos, Occidental Negros, which composes the Hacienda called San Jose, and which measures 602 hectares, 75 ares and 75 centares.

Parcel A. River Andaong, heirs of Antonio Castro, now of Juan River-a Libompacil, the beach of the municipality of San Carlos, Occidental Negros, the River Hindalaman and the estate road used by the public.

Parcel B. The estate road above referred to, the River Hindalaman and Teodoro Vega, Andres Mondragon, Domingo Medina,

River Andaong and heirs of Carlos Borromeo Masicampo, now of Tranquilino Broce and Ramon Lopez.

(Sgd.) J. M. ARROYO,
Attorney for the Compañia General de Tabacos de Filipinas.

Post Office address, Box No. 4, Iloilo.

76 (EXHIBIT G OF PETITIONER.)

Heading and Title.

Court of First Instance of Occidental Negros.

Civil Case No. 85. Foreclosure of Mortgage.

BACOLOD, April 6th, 1906.

Decision.

This action has been brought in conformity with one of the special remedies called "collection of mortgage credits". The plaintiff presents as proof Exhibit A, which is a mortgage instrument executed by the defendant in favor of the Compañia General de Tabacos de Filipinas and recorded in the registry of property on September 23, 1905. On page 15 of this instrument it appears that the defendant owed to the plaintiff the amount of fifty three thousand forty two pesos and fifty three centavos (P53,042.53). As is shown by the liquidation effected on December 10, 1904, between the creditor and the debtor, the latter declared that she agreed to the amount of the debt. From the date of this liquidation the debt bears interest at the rate of 10 per cent per annum and according to the stipulation found on page 17 of the said instrument the interest is to be capitalized on the 31st of December of each year. So that on December 31st of the year 1904, the date on which the interest should be capitalized, the debt amounted to fifty three thousand three hundred fifty one pesos and eighty five centavos (P53,351.85). The interest upon this principal at the rate of ten per cent per annum amounts to five thousand three hundred thirty five
77 pesos and eighteen centavos (P5,335.18) which, added to the principal to be capitalized, in turn gives a total of fifty eight thousand six hundred eighty seven pesos and three centavos (P58,687.03), and this principal bears interest at the rate agreed upon until such time as the court, as will appear farther on, shall order payment to be made.

There is also included in this judgment one thousand five hundred pesos (P1,500.00) which the court considers a reasonable sum to allow for expenses which the plaintiff has incurred in its action to recover its debt.

Wherefore the court enters judgment in favor of the plaintiff for the recovery from the defendant of the sum of fifty eight thou-

sand six hundred eighty seven pesos and three centavos (P58,-687,03) with interest at the rate agreed upon until complete payment is made, and that the defendant shall pay the said amount either into this court or to the plaintiff before the commencement of the next ordinary session of this court. The defendant is also sentenced to pay to the plaintiff one thousand five hundred pesos (P1,500,00) which the court allows to the said plaintiff by way of expenses and costs. In the event that the defendant does not pay the sums referred in this judgment within the period indicated the property mortgaged by her in the mortgage instrument shall be sold in order to make this judgment effective. So ordered.

(Sgd.) VICENTE JOCSON TAD-Y,
Judge, Tenth Judicial District.

78 (EXHIBIT 1 OF THE OBJECTOR.)

Heading and Title Omitted.

The plaintiff brings this action against the defendant and for a cause of action alleges:

1. That the plaintiff Compañia General de Tabacos de Filipinas is a corporation duly organized under the laws of Spain; that it operates under the laws of the Philippine Islands, and has a branch in Iloilo, Province of Iloilo, Philippine Islands.

2. That the defendant Romana Tanson y Catalbas, widow of Vega, is a resident of San Carlos, Occidental Negros.

3. That the defendant Romana Tanson y Catalbas, widow of Vega, for the purpose of guaranteeing the payment of twenty one thousand four hundred twenty-three pesos ninety three centavos (P21,423,93) which she acknowledges to have received and in effect did receive from Don Lazaro Mota y Ayo on September 6, 1902, executed and delivered to the said Don Lazaro Mota y Ayo, a guarantee in a public instrument executed before the notary public Don Gregorio Yulo, by which instrument the said defendant, for herself, her heirs, executors and administrators, obligated herself to pay to the said Don. Lazaro Mota y Ayo or his legal representative, within the period of two years counted from the 20th day of July, 1902, without interest whatever the said sum of twenty one thousand four hundred twenty three pesos ninety three centavos (P21,-423,93), in cash.

4. That by an instrument executed in the municipality of Iloilo on September 30, 1904, before the notary Don Gregorio
79 Yulo, Don Lazaro Mota y Ayo transferred the said credit, free of all charge and incumbrance, as well as the rights which said Sr. Mota had in the said credit, without reserve of any sort, to the Compañia General de Tabacos de Filipinas and he subrogated the latter in his place and rights in order that the said company might collect the said money from the debtor Sra. Romana Tanzon.

5. That by an instrument executed in the municipality of Iloilo on December 10, 1904, the said Doña Romana Tanson ratified and confirmed the transfer made by Don Lazaro Mota to the said company, and she also acknowledged all the amounts received from the said company up to the said date of December 10, which amounts, together with the mortgage credit extended by Don. Lazaro Mota, the total sum of fifty three thousand forty two pesos fifty three centavos (P53,042.53) legal currency of the Philippine Islands, with ten per cent interest per annum counted from the date of the said liquidation, December 10, 1904, the said interest to be paid at the end of the fiscal year of the said company which is the 31st of December of each year. If on the 31st of December of each year the debtor shall not have paid the interest then due, the said interest shall then form part of the debt and thereafter and in consequence thereof the amount thereof shall bear interest.

6. That the expenses occasioned the plaintiff on account of the collection of the said amount, including attorneys' fees, will amount to the sum of six thousand pesos (P6,000.00) which amount is agreed upon by the parties in the mortgage instrument.

7. That the period fixed for this mortgage contract is the 30th day of June, 1905, on which date the debt and interest due
80 thereon should have been paid.

8. That in guarantee of fulfillment of this contract, the payment of principal and interest, and the costs and expenses in case of execution, and attorneys' fees, the debtor, the herein defendant Doña Romana Tanzon, widow of Vega, mortgaged in favor of the said Compañia General de Tabacos de Filipinas the following property:

A sugar plantation known as the San Jose hacienda, situated in the sitio of Sibungcogon, barrio of San Carlos, pueblo of Calatrava, Western Region of the Island of Negros; the said hacienda consists of a parcel of land measuring four hundred sixty five hectares thirty three ares and eighty two centares; bounded on the north by government forest land, the River Andong, and on the other side of this river, land of Don Roberto Masicampo; on the east the same River Andong and on the opposite side the land of the said Roberto Masicampo, government mangrove swamps, the beach, other government mangrove swamps, the river Gigalaman, and on the other side of this river, lands applied for by Don Leon Vega and those belonging to Don Victor Visitacion; on the west the said River Gigalaman and on the opposite side thereof the lands of Don Victor Visitacion and the above-named government forest lands. There is included in this mortgage all improvements found on the property, and especially a storehouse of strong materials with nipa roof; a twelve horse power engine marked Key; and furnaces with their sugar boilers; an estate dwelling house of mixed materials; the carabaos on the estate of which the mortgagor cannot give the exact number but which are not less than 14 head.

81 9. That said mortgage empowers and authorizes, in the case of default of payment of said sum of money, or any part thereof, or of the interest thereon, the sale of the mortgage- prop-

erty in accordance with law, and the money realized on the sale shall be applied to the payment of said sum of money and interest and the costs and expenses of the suit, including attorneys' fees, and if there shall be any excess it shall be applied to the payment of the mortgage subordinate to the present one, and any further remainder shall be returned to the debtor, the herein defendant Doña Romana Tanzon.

10. That said defendant Doña Romana Tanzon has failed to comply with the conditions of the contract, in that she has not paid the sum of fifty one thousand seven hundred eighty four pesos twenty nine centavos (P51,784.29) and interest due thereon since the 15th day of July 1905; that the said sum has remained unpaid since the said date; that the plaintiff alleges that the whole of the principal is due and payable; that on July 15, 1905, there was legally owing to the plaintiff on said mortgage the sum of fifty one thousand seven hundred eighty four pesos and twenty nine centavos (P51,784.29) with interest from the said 15th day of July, 1905, and the six thousand pesos (P6,000.00) agreed upon for costs and expenses.

11. That no other action or proceedings have been commenced to recover the said amount guaranteed by the said guarantee or mortgage nor for any part thereof.

12. That the plaintiff has been informed and believes and therefore alleges that the defendant Doña Romana Tanzon has
82 disposed of and is about to dispose of an eight horse power engine, a tramway and other effects, which engine, tramway and effects are improvements belonging to the hacienda San Jose now mortgaged to the Compañia de Tabacos de Filipinas, plaintiff, and that the said engine and tramway is about to be removed from the said hacienda.

13. That by said alienation of the engine and tramway the property will suffer material damage, as without them the hacienda cannot be worked; that the mortgaged property is in danger of deterioration and of suffering material damage and the value of the same is insufficient to cover the mortgage debts; that the defendant Doña Romana Tanzon lacks sufficient capital to cultivate the hacienda and that the best and most suitable means of conserving and administering the said hacienda during the pendency of the action would be attained by the appointment of a receiver.

Wherefore the plaintiff prays the court to render a judgment in its behalf and against the defendant:

1. By sentencing the defendant Doña Romana Tanzon, widow of Vega, to pay the sum of fifty one thousand seven hundred eighty four and twenty nine centaves (P51,784.29) with interest at the rate of 10% per annum from the 15th of July, 1905.

2. That the said defendant be also sentenced to pay the sum of six thousand pesos (P6,000.00) legal currency of the Philippine Islands for expense occasioned to the plaintiff in this action, atttorneys' fees and costs of the proceedings.

3. That said defendant Romana Tanzon be sentenced to pay said

amount on or before the first day of the session following
83 that in which the order is dictated and if the said payment is not so made that the mortgage- property be sold, together with all the improvements thereon, including the engines and the tramway, in order to cover the mortgage debt, interest, costs and expenses, including attorneys' fees, from the proceeds of the sale and that said defendant Doña Romana Tanzon be sentenced to pay any amount which may be lacking.

4. That a receiver be appointed for the mortgaged hacienda, and empowered to care for and preserve the said hacienda with the improvements above mentioned, after first furnishing such bond as the court shall determine.

5. That the plaintiff be allowed such further relief as in equity and justice the court shall determine.

Iloilo, for Bacolod, September 26, 1905.

(Sgd.) AYLETT R. COTTON,
Attorney for the Plaintiff.

PHILIPPINE ISLANDS.
Province of Iloilo:

Personally appeared before me Luis G. Espoy, who first being duly sworn, sets forth that he is the attorney-in-fact and representative of the Compañía General de Tabacos de Filipinas in this Province of Iloilo, and that of Negros; that he has read the foregoing complaint and that of his own knowledge he knows that all the allegations contained therein to be true.

COMPAÑIA GENERAL DE TABACOS
DE FILIPINAS,
(Sgd.) By LUIS G. ESPOY.

Sworn to before a notary public September 26th, 1905.

Then follows certificate of clerk of court that the above copy is correct.

84 EXHIBIT NO. 2 OF THE OBJECTOR.

Heading and Title.

Civil Case No. 85.

Mortgage Foreclosure Proceedings.

BACOLOD, September 27, 1905.

The complaint filed in the above-entitled case, sworn to by the plaintiff, prays for the appointment of a receiver of the mortgaged property on the grounds that the defendant has disposed of, and is about to dispose of, an eight horse power engine, a tramway and other effects which are improvements on the mortgaged hacienda

and that the latter is therefore in danger of deteriorating and suffering material damages and that afterwards the value of the said hacienda will probably be insufficient to cover the mortgage debt demanded; therefore,

By these presents it is ordered that Don Juan D. Pomar, a resident of San Carlos, designated by the plaintiff's attorney, be appointed receiver of the property described in the complaint, and subject to the credit claimed therein: that he shall exercise such powers as are authorized by the law during the pendency of the action, it being understood that this appointment shall take effect as soon as the plaintiff shall furnish a bond in the sum of twelve thousand pesos (P12,000.00), Philippine currency, to protect the defendant from any loss or damage which she may suffer by reason of the appointment of such receiver; the receiver herein appointed, before entering upon the discharge of his duties, shall also
85 furnish bond in the sum of six thousand pesos (P6,000.00), Philippine currency. The clerk of this court is empowered to qualify and approve both bonds, each of which must be subscribed by solvent bondsmen to the satisfaction of the said clerk.

(Sgd.) VICENTE JOCSON TAD-Y,
Judge of the Tenth Judicial District.

Here follows certificate of the clerk of the court.

86 EXHIBIT NO. 3 OF THE OBJECTOR.

Heading and Title.

I, Juan D. Pomar, having been appointed receiver of the property described in the complaint and which property is subject to the credit herein demanded, by the powers conferred by law during the pendency of the above-entitled proceedings, solemnly swear that I will faithfully perform the duties pertaining to the said office and will obey all the orders and instructions which issue out of this court. So help me God.

San Carlos, October 4, 1905.

(Sgd.) JUAN D. POMAR.

(Sworn to before a notary public on October 4, 1905.)

Here follows certificate of the clerk of the court.

(Here follows Exhibit No. 4 of the objector which is the bond given by the plaintiff to respond for damages for appointment of Juan Pomar as Receiver in case No. 85 filed and approved October 30, 1905.)

(Here is set out Receiver's bond given by Juan Pomar on October 23, 1905, and notation of its presentation and approval on October 30, 1905.)

87 EXHIBIT No. 5 OF THE OBJECTOR.

Heading and Title Omitted.

Case No. 85.

Mortgage Foreclosure Proceedings.

The undersigned, clerk of the Court of First Instance of Occidental Negros,

Certifies: That, according to the records of the above-entitled case, Juan D. Pomar was, on the 27th of September, 1905, appointed receiver of the property of the defendant, Romana Gauzon, widow of Vega, and that up to the present time the said Juan D. Pomar has not been relieved from duty as such receiver.

In witness whereof, and on petition of Isabelo Garcia, I issue these presents in Bacolod this 29th day of December, 1910.

(Sgd.) MARIANO CUADRA,
Clerk of the Court of First Instance of Occidental Negros, P. I.

88 EXHIBIT No. 6 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Mortgage Foreclosure Proceedings.

The undersigned, clerk of the Court of First Instance of Occidental Negros,

Certifies: That in the records of the above-entitled case it does not appear that the Court of First Instance of this province authorized Juan D. Pomar, receiver of the property of the defendant Romana Gauzon, widow of Vega, to turn over the hacienda "San Jose" or "Subongcogon" to the Compañía General de Tabacos de Filipinas, nor to any other person in the name of the said company, which hacienda was sold at public auction by the sheriff of this province on the 12th of September, 1906, and adjudicated to Don Manuel Couts, in representation of the said Compañía General de Tabacos de Filipinas.

In witness whereof, and on petition of Isabelo Garcia, I issue these presents in Bacolod this 29th day of December, 1910.

(Sgd.) MARIANO CUADRA,
Clerk of the Court of First Instance of Occidental Negros, P. I.

89 EXHIBIT No. 7 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Mortgage Foreclosure Proceedings.

The undersigned, clerk of the Court of First Instance of Occidental Negros,

Certifies: That in the records of the above-entitled case it does not appear that the sheriff of this province, nor any of his deputies, turned over the hacienda "San Jose" or "Subongcogon," situated in San Carlos, Province of Occidental Negros, P. I., to the Compañía General de Tabacos de Filipinas, nor to any other person in the name of the said company, which hacienda was sold by the sheriff of this province at public auction on the 12th day of September, 1906, and adjudicated to Don Manuel Couto, in repre-entation of the said Compañía General de Tabacos de Filipinas.

In witness whereof, and on petition of Isabelo Garcia, I issue these presents in Bacolod this 29th day of December, 1910.

(Sgd.) MARIANO CUADRA,
Clerk of the Court of First Instance
of Occidental Negros, P. I.

90 EXHIBIT No. 8 OF THE OBJECTOR.

Sheriff's Return.

In Bacolod, on March 12, 1907, the undersigned sheriff repaired to the house of Mr. Ricardo Nolan in this city and on finding Doña Romana Gauzon, widow of Vega, therein, delivered to her a copy of the complaint and summons; at the same time the said sheriff notified her that the foregoing order, issued by the Honorable Court of First Instance of this province, ordered the attachment of the right to repurchase the hacienda San Jose in Subongcogon, within the jurisdiction of the municipality of San Carlos of this province, which hacienda was sold in this office at public auction on the 12th of September, 1906, and adjudicated to the Compañía General de Tabacos de Filipinas, the plaintiff, once the foregoing attachment, that is to say, the complaint, was dismissed the action in the Court of First Instance of Iloilo (sic). At the same time I notified her that from this date all the sugar cane on the hacienda San Jose was attached. The said lady having been duly informed acknowledged the summons but refused to acknowledged as legal and valid the writ of attachment for the reason that it was signed by the judge while he was in Iloilo and she stated furthermore that plaintiff was

aware that in the month of January of the present year the said defendant had already sold to Don Enriquez Azcona all her
91 rights in the sugar cane that was ready for milling on the hacienda above-mentioned as well as all of her rights in the debts of the tenants on shares of the said hacienda.

The proceedings were thereupon considered as terminated and these presents were thereupon signed to which I certify.

(Sgd.) A. ARANETA,
Deputy Sheriff.
(Sgd.) ROMANA GAUZON.

(Certified to by the clerk of the court as being a true correct copy.)

92 EXHIBIT NO. 9 OF THE OBJECTOR.

Heading and Title.

Civil Case No. 249.

For the Recovery of a Sum of Money.

BACOLOD, August 29, 1907.

Decision.

In these proceedings the plaintiff seeks to recover from the defendant the sum of eleven thousand ninety-three pesos (P11,093.00) with interest agreed upon until the sum is wholly paid, together with the costs.

The defendant answered denying the allegations contained in paragraphs 3, 4, and 5 of the complaint, and set up as a special defense that there are before this court two actions between the said parties, based on the same grounds; and as a second defense she alleged that if it should appear that the defendant owes anything to the plaintiff it is not yet due and therefore an action to recover the same does not lie.

The case came to trial, both parties presented their evidence, and the following facts have been proven.

1st. That Doña Romana Gauzon, by virtue of an instrument executed in Iloilo on December 10, 1904, in favor of the Compañía General de Tabacos de Filipinas, became in debt to the
93 latter, up to the 12th of September, 1906, in the sum of seventy-five thousand four hundred twenty pesos and fifty-four centavos (P75,420.54) of which amount the record shows that sixty-four thousand three hundred twenty-six pesos and ninety-two centavos (P64,326.92) was paid from the proceeds of the sale of the defendant's property at public auction in this city on September 12, 1906 (defendant's Exhibit No. 3) plus three thousand fifty-five pesos (P3,055.00), value of the carabaos and other

personal property set out in Exhibit No. 5 of the defendant; these payments total the sum of sixty-seven thousand three hundred eighty-one pesos and ninety-two centavos (P67,381.92) so that Romana Gauzon still owed the Compañía General de Tabacos de Filipinas the sum of eight thousand thirty-eight pesos and sixty-two centavos (P8,038.62) on the 12th of September, 1906.

2nd. The accounts of Doña Romana Gauzon with the Compañía General de Tabacos de Filipinas were also liquidated on the 18th of April, 1906, that is to say, prior to the liquidation above mentioned, and there resulted therefrom a balance in favor of the Compañía General de Tabacos de Filipinas of seventy thousand six hundred thirty-three pesos and eighty-three centavos (P70,633.83); the defendant agrees to this account (Exhibit C).

3rd. In the account Exhibit B of the plaintiff, there is debited against the defendant on the 31st of July, 1906, the sum of two hundred pesos (P200.00) as fees paid to Attorney Cotton; this amount should be deducted from the balance of eight
94 thousand three hundred eight pesos and sixty-two centavos (P8,308.62) in favor of the Compañía General de Tabacos de Filipinas, because the court, in case No. 85 between the same parties, allowed the sum of one thousand five hundred pesos (P1,500.00) as costs, and this amount is included in the proceeds of the sale of the hacienda belonging to Romana Gauzon.

It therefore appears to be proven that Romana Gauzon on the 12th of September, 1906, owed the Compañía General de Tabacos de Filipinas the sum of seven thousand eight hundred thirty-eight pesos and sixty-two centavos (P7,838.62) as a final balance of her account with the said company, with interest at ten per cent per annum as agreed upon in the document Exhibit A, which is the basis or origin of the contract between Doña Romana Gauzon and the Compañía General Tabacos de Filipinas, this balance then being a consequence of the said contract between the litigating parties.

For all of the foregoing the court sentences Romana Gauzon to pay to the plaintiff the sum of seven thousand eight hundred thirty-eight pesos and sixty-two centavos (P7,838.62) with interest thereon at the rate of 10 per cent from the 12th day of September, 1906, until payment is made. To the payment of this sum and its interest, as well as that of the sum of five hundred pesos (P500.00) which is hereby adjudged to the plaintiff as costs, there shall be applied the net profits of the sugar obtained from the attached cane of the defendant, and of the personal and movable property
95 also attached at the Hacienda San Jose on account of this suit, and in case this should be insufficient, the necessary amount of the proceeds from the sale of the defendant's attached right of repurchase of said hacienda shall also be applied to the payment of this judgment, and the receiver is hereby ordered immediately to render an account of the sugar produced in said hacienda. The execution of this judgment, if it becomes final, shall not be ordered until that account be filed and approved by the court. Furthermore, by virtue of the attachment of the right of repurchase of

the defendant of the Hacienda San Jose, the period of the repurchase is suspended until this judgment becomes final, such suspension to be understood as being effective from May 10 last.

So ordered.

(Sgd.) VICENTE JOCSON TAD-Y,
Judge of the Tenth Judicial District.

96 Heading and Title.

In the Supreme Court of the Philippine Islands.

Docket No. 4502.

Decision.

April 13, 1909.

The Court of First Instance of Occidental Negros, from which comes the judgment appealed from in the present bill of exceptions brought before this court, made the following findings:

First. That the defendant, by virtue of a mortgage deed dated December 10, 1904, became indebted to the plaintiff up to September 12, 1906, in the sum of P75,420.54; that of this amount she paid P64,326.92, the value of the property mortgaged, and P3,055, the value of the carabaos and other personal property sold, making a total sum of P67,381.92, which, deducted from the first amount, leaves a balance of P8,038.62.

Second. That the sum of P200 was charged in the account, Exhibit B, of the plaintiff, as fees of the attorney for that company, the amount of P1,500 having been already awarded it as costs in a prior suit; therefore this sum of P200 should be deducted from that of P8,038.62, thus reducing the amount of the latter to P7,838.62 "as a final balance of the defendant in favor of the plaintiff on September 12, 1906, with interest at the rate of 10 per cent per annum, agreed to in Exhibit A, which is the basis or ground of the contract between Doña Romana Gauzon and the Compañía Gen-
contract between the parties to the suit." (B. of E., 5.)
97 eral de Tabacos, such balance being a consequence of said

And the court rendered the following decision:

"The court centences Romana Gauzon to pay to the plaintiff of sum of P7,838.62, with interest thereon at the rate of 10 per cent from the 12th day of September, 1906, until payment is made. To the payment of this sum and its interest, as well as that of the sum of P500 which is hereby adjudged to the plaintiff as costs, there shall be applied the net profits of the sugar obtained from the attached cane of the defendant, and of the personal and movable property also attached at the Hacienda San Jose on account of this suit, and in case this should be insufficient, the necessary amount of the proceeds from the sale of the defendant's attached rights of repurchase of said hacienda shall also be applied to the payment of this judgment, and the receiver is hereby ordered immediately to render an account of the sugar produced in said hacienda. The execution of

this judgment, if it becomes final, shall not be ordered until that account be filed and approved by the court. Furthermore, by virtue, of the attachment of the right of repurchase of the defendant on the Hacienda San Jose, the period of the repurchase is suspended until this judgment becomes final, such suspension to be understood as being effective from May 10 last." (B. of E., 6.)

The sum of P11,093.62, claimed in the complaint, having been reduced by this judgment to P7,838.62, the plaintiff, as may
98 be seen, has agreed to this part of the judgment and only claims as error therein:

1. In so far as it is decreed therein "that the net profits of the sugar produced by the cane attached from the appellee should be applied to the payment of the balance adjudicated to the appellant."

2. In so far as it is also ordered "that to the payment of the debt of the appellee there shall be applied the necessary amount from the proceeds of the sale of the right of repurchase of the Hacienda San Jose that was sold at public auction by virtue of the foreclosure of mortgage on September 12, 1906."

3. In so far as it has suspended the right of repurchase of the Hacienda San Jose.

And the plaintiff alleges: That the court should have limited itself to rendering a judgment in favor of the plaintiff without in addition providing the form of the execution; that the court could not order the application of the value of the sugar produced by the attached cane, because the plaintiff contends that this cane is its own, or at least until it has been finally held that it does not belong to the plaintiff; that the action brought in this case (No. 249 of the court) is purely personal, not one of mortgage, as is that instituted in the other (No. 85); that there is no right of repurchase in the execution of a judgment of foreclosure of mortgage, in which it differs from a simple execution resulting from a personal action; that, therefore, the value of the right of repurchase, in the matter of the sale at public auction made in case No. 85, which was the result
99 of a mortgage action, could not be ordered applied to the payment of the execution of this judgment; that there is no law authorizing the court below to suspend, in its discretion, the right to repurchase the Hacienda San Jose.

The trial court has not incurred in the first error, since section 436 of the Code of Civil Procedure expressly authorizes it to order the sale of the property attached in this suit.

Neither has it incurred in the second error for the same reason. As to whether or not the right to repurchase mortgaged property sold at public auction exists, this is a question that can not be decided at present by this court; it was not brought up on appeal and was neither presented to nor decided by the court below.

However, the order of the court relating to this right of repurchase is the outcome of the attachment of the said right; the attachment was admitted by the appellant in saying in its brief (p. 10): "This attachment matters nothing * * * not by our attachment of it (the right to repurchase) nor by our admission would it be

created." Whether it should not legally exist and whether it was not created, are questions to be decided by the court only; but we have to deal with a juridical act which, so long as it is not declared null and void, as such a juridical act serves for something and with respect to the parties who have executed it and consented thereto, is of course efficient and binding in its effects and consequences.

100 If it was actually attached the same as was the sugar cane, at the instance of the appellant, the latter can not evade the consequences and efficiency of its own act, nor did the court exceed its powers, in making use of that conferred upon it by the said section 436, which deals with the final disposition of attached property.

With regard to the suspension of the term of the right to repurchase, by virtue of the conclusive presumptions: "16— that all the matters within an issue in an action were laid before the court and passed upon by it;" and "31 — That the law has been obeyed," there being no proof or allegation to the contrary, this court must find that the court below, considering that the attachment of a right implies an inhibition or privation of its exercise, and that, the right of redemption being attached, it could not be exercised during the period of attachment, and while the litigation was pending, could, by virtue of the principle that a prescriptive term shall not run against him who can not act, fix the period, during which the legal term for the exercise of that right which was suspended by reason of its attachment, should not run.

The findings of the court below, impugned in this appeal, are, according to the assignment of errors of the appellant, as follows:

1. The application, to the payment of the sentence, of the net proceeds of the sugar obtained from the attached cane of the defendant.

101 2. The application to that payment, in the second place, of the value of the sale, in the necessary amount of the right to redeem the said hacienda, which right was attached from the defendant.

3. The suspension of the term for redemption from May 10, 1907, until the judgment in this case becomes final.

All the other findings having been accepted, we decide that we should affirm the decision with regard to the three findings objected to in the brief of the appellant, with the costs of this instance against the said appellant.

So ordered.

(Sgd.) C. S. ARELLANO.

Concur:

(Sgd.) FLORENTINO TORRES,
" VICTORINO MAPA,
" A. C. CARSON.

102 EXHIBIT No. 10 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

For the Recovery of a Sum of Money.

Now comes the attorney for the defendant and sets forth:

That on the hacienda San Jose, situated in Subongcogon, within the jurisdiction of the municipality of San Carlos of this Province of Occidental Negros, the property of the defendant which has been taken over by the receiver Juan Pomar, there is enough sugar cane to produce from 1,500 to 2,000 piculs of sugar, and that the receiver without any justificable motives, because the weather in San Carlos has not interfered with, nor can he allege the lack of necessary capital, has failed to grind said cane and has thus prejudiced the interests of the said defendant and favored those of the plaintiff to whom the said receiver is obligated for the reason that he is an employee of the said company.

The undersigned therefore prays the court to order the said receiver Juan Pomar to proceed at once to grind all the cane on the said hacienda San Jose, which said hacienda is the property of the defendant and is in the hands of the said receiver.

Bacolod, September 9, 1907.

(Sgd.) JOSE FELIX MARTINEZ.

(Here follow certificates of notice of copies furnished and certificate of the clerk that the foregoing is a true copy.)

103 EXHIBIT No. 11 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Mortgage Foreclosure Proceedings.

Comes now the defendant through her attorney, and to the Honorable Court sets forth:

That she has received a copy of the statement of the accounts which the receiver appointed in the above-entitled case has sent to the office of the clerk of this court; that said account does not set forth the number of piculs of sugar which were ground from the crops of the tenants on shares of the defendant and which crops were also placed in the hands of the said receiver; that the daily wages paid to the laborers are not itemized so that it is impossible for us either to challenge or to approve them.

That no vouchers of any sort accompany the said account.

That the undersigned prays the Honorable Court to order the said receiver to furnish within a reasonable time a detailed account, supported by vouchers, in which shall be included the sugar that was ground from the crops of the tenants on shares, to the end that the defendant at the proper time, may make such criticisms thereof as she is entitled to make.

Bacolod, December 4, 1907.

(Sgd.) JOSE FELIX MARTINEZ,
Attorney for the Defendant.

(Here follow certificates of notice of copies furnished and certificate of the clerk that the foregoing is a true copy.)

104 EXHIBIT NO. 12 OF THE OBJECTOR.

Heading and Title Omitted.

BACOLOD, September 21, 1907.

After hearing the defendant's motion, in which she prays that the receiver of her attached property be ordered to grind the attached cane which he still has on hand.

The court hereby orders the receiver of the attached property of the defendant to proceed to grind any cane that is to be found among the attached property which he may have on hand.

So ordered.

(Sgd.) VICENTE JOCSON TAD-Y,
Judge of the Tenth Judicial District.

(Here follows the certificate of the clerk of the court that the foregoing is a true copy.)

105 EXHIBIT NO. 13 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 249.

Recovery of a Sum of Money.

BACOLOD, November 23, 1907.

Having heard the foregoing motion of the defendant to have the receiver of her attached property, Juan D. Pomar, come into court and set forth any reasons he may have why he should not be proceeded against for contempt of court for not having presented a detailed account of his transactions in the matter of the sale of the sugar.

The court hereby orders the receiver, Juan D. Pomar, to file with this court, within the period of 15 days from the date on which he

receives this order, a detailed account of his transactions with regard to the sale of the sugar produced by the cane attached from the defendant and ground by him.

So ordered.

(Sgd.) VICENTE JOCSON TAD-Y,
Judge of the Tenth Judicial District.

(Here follows the certificate of the clerk of the court that the foregoing is a true copy.)

106 EXHIBIT No. 14 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Mortgage Foreclosure Proceedings.

BACOLOD, December 7, 1907.

Having heard the foregoing motion filed by counsel for the defendant, in which he alleges that the receiver of the property attached from his client, in the account presented by him to this court has failed to state the number of piculs of sugar that were secured from the crops of the defendant's tenants on shares, which crops were also placed in charge of the receiver and ground by him; furthermore, that no itemized statement has been made of moneys paid out, for which reasons it is impossible to either challenge or approve the account.

The court has examined the account filed by the receiver for the attached property of the defendant, Don Juan de Pomar, and has noticed the omissions set forth in the motion filed by the defendant.

Wherefore, by these presents, the court orders Don Juan de Pomar, receiver for the attached property of the defendant, to file with this court, within the period of 20 days counted from the date on which he receives the order, a detailed account, supported by vouchers, in which he will include the sugar ground and produced from the crops gathered by the tenants on shares of the said defendant.

So ordered.

(Sgd.) VICENTE JOCSON TAD-Y,
Judge of the Tenth Judicial District.

(Here follows clerk's certificate that the foregoing is a true and correct copy.)

107 EXHIBIT NO. 15 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Now comes the undersigned attorney in representation of the defendant and to this honorable court sets forth:

1st: That in this action, at the instance of the plaintiff, there has been attached all the sugar crops on the hacienda San Jose within the jurisdiction of San Carlos, Occidental Negros, corresponding to the year 1906-1907.

2d. That after judgment was rendered in this case, the hacienda San Jose above-mentioned was sold at public auction and purchased by the plaintiff through Manuel Couto.

3d. That after the said sale was effected, the plaintiff claimed that the sugar crops were included in the sale and that they therefore belonged to him.

4th. That the Court of First Instance of this province entered judgment in which it held that said crops did not belong to the plaintiff for the reason that they were not included in the sale.

5th. That the Honorable Supreme Court of these Islands, in a decision renderd on the 12th of April of the present year, found that the sugar crops above-mentioned were the exclusive property of the defendant as was also the aliquot part of the crops of the tenants on shares on the said hacienda which corresponded to the defendant.

6th. That Juan de Pomar was and is now receiver for said crops and the products thereof.

108 7th. That said Juan de Pomar has presented various accounts but that none of them is correct; that they contain many ambiguous entries as well as various pretensions of the plaintiff, all of which makes it impossible to understand the said accounts.

8th. That this proceeding was commenced in September, 1905, and its lengthy duration has prejudiced and prejudices the defendant; that this is principally due to the fact that said receiver has on several occasions refused to comply with the orders of this honorable court and to the fact that up to the present time he has not filed a correct and properly detailed statement.

Wherefore; the undersigned prays the court to order the said receiver to file with the court, within the nonextendible period of 15 days, a detailed account, supported by vouchers, of the total number of piculs of sugar which has been produced by all the crops of sugar cane that were on the hacienda San Jose when he was appointed receiver thereof, and also a detailed account of the expenses occasioned by the care and cultivation of the cane, transportation, commissions and other expenses occasioned by the sale of

the sugar, without including in the said account the claim or claims of either of the parties to this action.

Bacolod, June 23, 1909.

(Sgd.) A. P. SEVA,
Attorney for the Defendant.

(Here follows notices of service of copy, notary's certificate, etc.; certified as a true copy by the clerk of the court on December 29th, 1910.)

109 EXHIBIT NO. 16 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Now comes the undersigned attorney and in answer to the motion filed by the defendant respectfully sets forth:

1st. That the receiver, Juan de Pomar, has already filed with the court all the accounts of his administration, together with supporting vouchers, and that they appear in the record.

2d. That said accounts were submitted to the court, then presided over by the Honorable Judge Vicente Jocson, together with various claims of the Compañia General de Tabacos de Filipinas which also appear in the record.

3d. That said accounts were already prepared and ready for the decision of the court, since the defendant had already made her comments and objections which were duly answered by the receiver; but that the court neither approved nor disapproved said accounts, because the Supreme Court has not yet settled the question of the said sugar cane.

4th. The claims of the Compañia General de Tabacos de Filipinas although they were discussed, proven, and reargued, were likewise not decided, for the same reason, that is to say, that the Supreme Court has not yet decided the question of whether the cane on the hacienda was included in the sale, or whether this sale should be made a second time.

5th. That the accounts cannot be further itemized, for the reason that they are sufficiently itemized and supported by vouchers
110 which are already in the record, and the only point in dispute is their correctness and accuracy and that is the point which remains to be decided.

6th. It already having been decided that the cane was not included in the sale, and as the holding of a new sale has been disallowed, it is now proper to decide or pass upon the correctness of the accounts as well as the claims of the Compañia General de Tabacos de Filipinas which are necessarily related to the account, as will be seen by a detailed examination of the record.

Wherefore, the undersigned prays the court to pass upon the said accounts of the receiver, which together with all of their vouchers, are already filed in the record, and to consider as reproduced every-

thing contained in the same referring to this action, together with the respective arguments, objections, answers, proofs documents and affidavits, as well as everything that relates to the claims of the Compañia General de Tabacos de Filipinas which are specified in the record, together with the proofs.

Bacolod, July 3, 1909.

(Sgd.) J. M. ARROYO,
Attorney for the Plaintiff.

(Here follows certificate of the clerk of the court.)

111 EXHIBIT NO. 17 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Foreclosure Proceedings.

BACOLOD, July 15, 1909.

Order.

After hearing of the motion filed in this case by counsel for the defendant, together with the answer thereto made by counsel for the plaintiff;

It is hereby ordered that the receiver, Juan D. Pomar, within the term of 15 days dated from the day following that on which he receives a copy of this order, shall file in this court a detailed account, supported by vouchers, of the total number of piculs of sugar that was obtained from the cane that was found on the hacienda San Jose when he was appointed receiver thereof, together with an itemized statement of the expenses occasioned by the care and cultivation of the sugar cane, transportation, commission and other expenses arising out of the sale of the sugar, without including therein any claim or claims of either of the parties to this litigation.

(Sgd.) ALBERT E. McCABE,
Judge of the Tenth Judicial District.

(Here follows certificate of the clerk of the court.)

112 EXHIBIT NO. 18 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Foreclosure Proceedings.

The undersigned, clerk of the Court of First Instance of Occidental Negros, P. I.,

Certifies: That Juan D. Pomar, receiver appointed in this case by the Court of First Instance of this province, has appealed to the Supreme Court of the Philippine Islands from the judgment entered by said court on the 22- of September, 1909, on the point or question of the accounts filed by him as such receiver, and that up to the present time the record does not show that the said appeal has been decided by the said Supreme Court.

In witness whereof and on petition of Isabello Garcia I issue the present certificate in Bacolod this 29th day of December, 1910.

(Sgd.) MAR. CUADRA,
Clerk Court of First Instance,
Occidental Negros.

113 EXHIBIT NO. 19 OF THE OBJECTOR.

I, Gabino Sepúlveda, fiscal and registrar of deeds of the province of Occidental Negros, Philippine Islands,

Certify: That Sr. R. Nolan, married, resident of this town, broker, has applied for a certified copy of the entry of the inscription of the property No. 18 made at the back of folio 154 of Volume I of the stub book of the municipality of Calatrava, and that I have examined the corresponding books in this registry and find that at the back of folio 154 there is an entry referring to the said property which reads as follows:

Property No. 18; annotation letter C; rural property; sugar hacienda known as the "San Jose," situated in the sitio of Siboncogon, barrio of San Carlos of what was formerly the pueblo of Calatrava, the description of which appears in the first inscription, formerly annotation letter A, property of this number, appearing at folio 76 of this present volume and agreeing with that made in the title here presented, with the sole difference that according to the latter it is bounded on the east by the said river Andoon, and on the opposite side the lands of the said Roberto Masicampo, government swamp lands, the river Gigalaman, and on the other side of this river lands applied for by Don Leon Vega and those of Don Victor Visitacion, and on the south the sea. The following property forms part of this hacienda: Two steam engines, one of 12 horse power and the other of 8, marked K. E. T. and Blai Brothers respectively, together with

their corresponding boilers; one storehouse of light materials, in two parts, with a nipa roof; four bagasse storehouse of light
114 materials with nipa roof; 387 lengths of tram-rails, equal to 1,935 meters, and 3 switches, all half worn; 15 wagons in bad condition; 2 furnaces with 12 sugar boilers and 2 extra ones; 20 workmen's dwelling houses of light materials; 1 set of scales in good condition; a storehouse with galvanized iron roof; 1 corn mill; 16 plows marked Urquijo; 2 iron harrows; 14 boiler tubes for the large engine; 60 smooth pieces of galvanized iron for locusts; and 23 worn spades. No incumbrance appears to be charged thereon. Doña Romana Ganzon, widow of Vega, has the right to purchase the property which right will prescribe at the end of 12 months dated from the 12th day of September, 1906. An action was commenced in the Court of First Instance of this Province of Occidental by the Compañía General de Tabacos de Filipinas, plaintiff, versus Romana Gauzon, widow of Vega, defendant, in which the plaintiff has declared under oath that the defendant owes him the sum of eleven thousand ninety-three pesos and sixty-two centavos (P11 093.62) and interest agreed upon until complete payment, and that the said defendant has disposed of part of her property and is about to dispose of other property with the intention of defrauding her creditor, the plaintiff; and the latter having furnished in favor of the defendant the bond required by law, the Honorable Vicente Jocson Tad-y, judge, of the tenth judicial district, on the 11th day of March of the present year, issued a writ of preliminary attachment against the real and personal property of the defendant for the amount of the complaint and costs; that by virtue of this writ, Sr. Arturo Cuadra,
115 deputy sheriff of this province, on the 13th day of March of the present year proceeded to attach the right which the defendant Romana Guazon had to purchase the property of this number with all the sugar cane on the hacienda. All of the foregoing appears in the writ issued on the 11th of March of the present year out of the Court of First Instance of this province and the notification registered in duplicate in this town on the 13th day of the said month and year by Sr. Arturo Cuadra, deputy sheriff of the Province of Occidental Negros; these documents were presented in this registry at 7:30 o'clock on the morning of the 14th day of the said month of March of the present year, as appears in entry No. 782, page 193 of volume 2 of the dairio, and the said writ, together with the duplicate copy of said notification, was filed away in the corresponding bundle among the records of this registry.

All of the foregoing agreeing with the said document, I sign the present notice of attachment in Bacolod this 1st day of April, 1907.

(Sgd.) PAUL WUTHRICK,
Acting Registrar of Deeds,
Province of Occidental Negros.

The foregoing entry is an exact copy of that which appears in the volume, page, and under the numbers given, to which I refer. And

in witness whereof I issue these presents in Bacolod, this 16th day of December, 1910.

(Sgd.) GABINO SEPULVEDA.
Registrar of Deeds, Occidental Negros.

116 EXHIBIT NO. 20 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 249.

Recovery of a Sum of Money.

BACOLOD, August 29, 1907.

Decision.

In this motion Romana Gauzon prays for a release of the attachment levied upon her right to redeem the hacienda San Jose, situated in Siboncogon, within the jurisdiction of San Carlos of this province. Said hacienda was sold at public auction on the 12th of September, 1906, by virtue of the execution issued in case No. 85 between the same parties. In support of her claim she alleges that 2,000 piculs of sugar were ground and delivered to the Compañía General de Tabacos de Filipinas (Exhibit 6) and with the cane ready for milling they are sufficient to answer for the amount demanded.

At the hearing of the motion the petitioner defendant adduced as her only proof Exhibit 6, which appears in the record. In this exhibit it appears that the sugar cane planted on the hacienda San Jose, the sheep, and personal property thereon were all attached, and it also appears that 2,000 piculs of sugar have already been ground and sent to Iloilo to the plaintiff company; but the classes of sugar or the share or participation of the tenants on shares owning said sugar cane does not appear therein.

From the proof above-mentioned the court is unable to say a priori whether the net return from the sugar sent to Iloilo and the sugar obtained from the cane, after deducting the share
117 belonging to the tenants on shares, are sufficient to cover the debt demanded, because the evidence does not show the classes of sugar nor the cost of production and sale thereof. Only when it shall clearly and unmistakeably appear that the plaintiff company has received a net sum equal to the amount demanded, will it be proper to release the attachment of the right of redemption.

A preliminary attachment of the property and rights of a defendant or debtor provided for by law under the conditions specified therein, has for its object to guarantee to the plaintiff the collection of the amount he seeks to recover, in order that in case the defendant is sentenced to pay the amount the execution of the judgment shall not be illusive and void. The law has provided a method by which the defendant may ask for the release of a writ

of preliminary attachment and has established certain requirements therefor. Sections 440 and 441 of the Code of Civil Procedure are applicable to the present case.

The petitioner Romana Gauzon has not fulfilled any of the requirements prescribed by the said sections and the motion must therefore be denied.

For all of the foregoing the court denies the motion to release the preliminary attachment levied upon the right of Doña Romana Gauzon to repurchase the hacienda San Jose. So ordered.

(Sgd.) VICENTE JOCSON TAD-Y,
Judge of the Tenth Judicial District.

118 EXHIBIT NO. 21 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 85.

Foreclosure Proceedings.

The undersigned, clerk of the Court of First Instance of Occidental Negros,

Certifies: That in the records of the above-entitled case it does not appear that the final record of the action prescribed by section 261 of the Code of Civil Procedure has been made.

In witness whereof and on petition of Isabelo Garcia I issue the present certificate in Bacolod this 29th day of December, 1910.

(Sgd.) MARIANO CUADRA,
Clerk of the Court of First Instance of Occidental Negros.

119 EXHIBIT NO. 22 OF THE OBJECTOR.

Case No. 6303.

This is an itemized account of the corn delivered by the tenants on account of the shares pertaining to the two haciendas San Jose and San Antonio from August 18, 1894, to October 8 of the same year.

120 Court of Land Registration.

Case No. 6303.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Petitioner.

Proceedings of the session held before the Honorable Higinio Benitez, Auxiliary judge, in the municipality of San Carlos, Occidental Negros, P. I., on January 6th, 1911, at 8 A. M.

This case having been called, there appeared: for the petitioner, Sr. Carlos Ferrandiz, assisted by attorney Jose Ma. Arroyo; for the objector Romana Gauzon, attorney A. P. Seva; and for the Director of Lands, Provincial Fiscal Gabino Sepúlveda.

The court advised the parties that either of them could state his case, whereupon counsel for the objector Romana Gauzon asked that he be reserved the right to file an opposition in the name of the said objector with respect to that part of the land which Sr. Andrés Mondragón sold and transferred to the petitioning company, promising to present it during the session of the court in this municipality. His petition was granted by the court.

Sr. Arroyo in behalf of his client stated that the question to be decided in the present proceeding relating to the opposition of Romana Gauzon is purely a question of right, in which the objector maintains the existance of the right of redemption in her favor, and the petitioner denies the existence of the right of redemption so claimed; and as the objector maintains the affirmative and the
121 petitioner the negative, he is of the opinion then that the objector should be the first to adduce her evidence.

Sr. Seva, in behalf of the objector, then said that the legal procedure has always been for every petitioner to produce his proofs first and for the objector to produce his afterwards.

In view of this discussion between the parties, the court decided that the petitioner should first present his proofs and then the objector should present hers.

Proofs of the Petitioner.

Counsel for the petitioner asks for general declaration for default in this case with the exception of the Director of Lands and Romana Gauzon.

The court at once ordered a general declaration of default save for the objections of the Director of Lands and Romana Gauzon.

Both parties agree that the Compañía General de Tabacos de Filipinas, petitioner in the present action, is a company regularly organized in the Philippine Islands in accordance with the laws in force therein.

Counsel for the petitioner presented as part of his proofs the documents attached to the record marked Exhibits B, D, E, and F and all the others attached, as has been said, to the record.

The provincial fiscal in behalf of the Director of Lands objected to the admission of the document marked Exhibit E because no copy thereof had been received in his office although at the foot of the said document it is stated that one had been sent.

Mr. Seva also objected to the admission of the said docu-
122 ment as illegal because it therein sets forth the cession (of) rights and actions in favor of the petitioner to the property described in the petition when in fact (it) was not authorized for the purpose.

The court nevertheless admitted all the documents presented by

counsel for the petitioner. On this ruling, the provincial fiscal and counsel for the objector asked that their objections should be recorded.

Oath being duly administered in legal form, the following witnesses testified: Carlos A. Ferrandiz, 33 years of ago, married, manager of the branch of the Compañía General de Tabacos de Filipinos in Iloilo, P. I.

Eduardo Bugtong, 46 years of age, married, manufacturer, residing in the municipality of San Carlos, Occidental Negros, P. I.

Counsel for the petitioner and that of the objector Romana Gauzon agreed that all the evidence of this last witness referring to the word "sale" in the petition would be excepted to by the objector, and that the court would overrule the objection.

Counsel for the petitioner presented as part of his proofs the document marked Exhibit C; this document is the original of the one attached to the record marked with the same letter.

The provincial fiscal objected to the admission of this document for the reason that the area of the land sold does not appear therein.

Attorney Seva supported the objection of the fiscal and made it his own, on the ground that the presentation of the said document is immaterial to the proceedings.

123 Sr. Arroyo, in answer to the reasons given by the fiscal and the counsel for the objector, said that according to the Civil Code in force in these Islands in a sale at public auction it is unnecessary to state the area of the property. For this reason he asked the court to overrule the objections made by the provincial fiscal and counsel for the objector.

The court admitted in evidence Exhibit C; the provincial fiscal and counsel for the objector asked that their exceptions to this ruling appear of record.

Counsel for the petitioner also presented as part of his evidence the document which he asked to be marked Exhibit G; this was admitted without objection.

Mr. Arroyo, attorney for the petitioner, stated that he had no more proof to offer.

Proofs of the Objector Romana Gauzon.

Counsel for the objector presented the following documents which he asked to have marked as Exhibits as follows:

No. 1, without objection on the part of the petitioner.

Nos. 2 and 3; objected to by counsel for the petitioner as irrelevant and immaterial.

Nos. 4 and 5; same objection on the part of the petitioner.

Counsel for the objector asked that Exhibit D, presented by the petitioner and attached to the record, should be included as part of her proofs.

Exhibits Nos. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17; objected to by the counsel for the petitioner as irrelevant and immaterial.

124 After having been duly sworn, the following witness testified:

A. P. SEVA, 35 years of age, married, attorney at law, residing in the municipality of Bacolod, Occidental Negros, P. I.

During the examination of this witness he presented a document and asked that the court order that the said document should be corrected by the deputy clerk so that the date appearing therein should read May, instead of December, the former being the correct month, and that it should be marked Exhibit 18; he also presented the documents which were marked Exhibits 19, 20 and 21. These were admitted by the court as such Exhibits Nos. 18, 19, 20 and 21, over the objection of Sr. Arroyo, who asked that his objection be noted.

The court then ordered the deputy clerk to correct the date of the document marked Exhibit 18, which was done.

Counsel for the objector offered to present a certificate as evidence of the attachment of the property of the said objector that has not yet been released.

The court reserved to the counsel of the said objector the right to present the certificate here offered.

It being 12 o'clock, on petition of the parties the court suspended the hearing until 2 o'clock P. M. The session closed at 12 noon. Sr. A. Gómez Jesús took the stenographic notes.

(Certificate of clerk follows.)

(Here follows decree of default of January 6, 1911, in the registration proceedings against all persons except the Attorney-General of the Philippines and Romana Gauzon.)

125 UNITED STATES OF AMERICA,
Philippine Islands,
Court of Land Registration:

Session held on January 6th, 1911, in the municipality of San Carlos, Province of Occidental Negros, the Honorable Eugenio Benitez, Auxiliary judge, presiding.

The session was opened at 8 o'clock A. M. by the deputy sheriff, Don Vicente Insua acting as deputy clerk and the undersigned as stenographer.

Case No. 6303, Compañia General de Tabacos de Filipinas, petitioner, was called.

There appeared in representation of the petitioner Carlos A. Ferrandiz, manager of the Iloilo branch of the Compañia General de Tabacos de Filipinas, assisted by Attorney Jose Arroyo; the objector Sra. Romana Gauzon, assisted by Attorney Agustin P. Seva and the broker R. Nolan; for the objector Director of Public Works, Gabino Sepulveda, provincial fiscal of Occidental Negros, in representation of the Insular Government.

Seva: In addition to the opposition of Doña Romana Gauzon I desire to state to the court that even though from the exhibits filed in the case, there is to be understood that there is a limitation upon

the right of ownership which the petitioner claims to exercise over the said property, nevertheless, the objector has received no direct notification other that the general notice given to all the
126 world or that made in the Official Gazette. For that reason we have had no opportunity of examining the history of this case, for which reason it is only now we have been informed that one of the proofs which the petitioner presents in support of his claim is a deed of transfer from Mr. Mondragon. Naturally, then, from what we have just set forth, we have had no opportunity, with knowledge of the cause of action, to prepare any written petition with regard to any portion which might prejudice the objector. For this reason I ask the court to reserve to us the right to present this in writing the objection I now state verbally. I make this request or statement after having had a conference with the petitioner's counsel during which I have obtained some slight idea of what it was that Sr. Mondragon claims to have transferred to the Compañia General de Tabacos de Filipinas.

Arroyo: Months ago, Sra. Romana Gauzon, by means of her agent Mr. Nolan, was advised that the petitioner had filed an application to register this property, in proof of which one of the agents of the said objector went to Manila to study the case, and with regard to this matter I do not think there is room for any suspicion whatsoever. In the second place, the number of hectares which appears in the title of composition with the state in the name of the objector Romana Gauzon is specifically mentioned in the record, and we claim that all the difference of 137 hectares which exists between the number of hectares granted by the government to Doña Romana Gauzon and the number of hectares stated on the plan, is owing to portions of land which were sold by Sr. Mondragon
127 to the petitioner. I should like therefore to have Mr. Seva specify his opposition with respect to this, to the exclusion of the 465 hectares which the Spanish government granted to Doña Romana Gauzon; what is the claim of Doña Romana Gauzon with regard to these 137 hectares? Because the Attorney-General comes in and objects on the part of the government and claims that the whole of the difference between the total area shown on the plan and the 465 hectares obtained by Doña Romana Gauzon by composition with the state, belongs to the government. Now we desire to know if Doña Romana Gauzon claims this difference or excess over the 465 hectares, jointly with the Attorney-General, or what it is she claims with regard to this difference.

Seva: From the statement last made by counsel for petitioner I understand that he claims to derive title to the 465 hectares referred to in the title of the objector Romana Gauzon, and with regard to the remaining number of hectares, from 465 to a little more than 600 contained on the property, that is to say, approximately 137 hectares, he claims to derive title from Mr. Mondragon. That is to say, that by the merest chance, Mr. Mondragon possesses as owner the 137 hectares of difference between the real title and the true area of this property. All persons who have any experience in the matter of

securing titles to real estate are well aware of the defective form of crown titles with regard to the extent of the property concerned. Very frequently the properties contain a greater area than that indicated in the royal title, within the boundaries which the titles themselves give as the boundaries of the property. Now, then,

128 Doña Romana Gauzon claims to be the owner, that is to say, she claims to have the right to repurchase which is mentioned in the opposition, of the whole of the extent or area referred to in the real title and furthermore over that portion of the land on the side of the mountain, which since the year 1884 or thereabouts she has cultivated. These two tracts together form the 600 odd hectares which make the estate and over the whole of this area Doña Romana claims the rights which she alleges in her written opposition.

Arroyo: That is to say, for greater clearness, I understand that these 137 hectares claimed by the government belongs to her; it does no- matter to us whom they belong to because in any case we claim the registration of 602 hectares in the name of the petitioner. If it is from Doña Romana Gauzon, it cannot prejudice us because we derive the title of the Compañia General de Tabacos de Filipinas to the 465 hectares, or 450 hectares, through the title of Doña Romana Gauzon. So that the opposition is not here between Doña Romana Gauzon and the petitioner, but between this lady and the Insular Government; and if by reason of the difference in the title in regard to the old measurements this difference existed, and if on the other hand the Attorney-General claims that it belongs to the government, the opposition is between Romana Gauzon and the Government; if the court finds that these 135 hectares belong to Doña Romana Gauzon and also finds that all that which belonged to Doña Romana Gauzon was acquired by the Compañia General de Tabacos de Filipinas there is then no opposition or dispute between Romana Gauzon and the Compañia General de Tabacos de Filipinas. The contest will be between Romana Gauzon and the Insular Government.

129 Seva: But the objector, by not objecting to the inclusion of the strip of land as proceeding from Mondragon and not from her, would lose her right to repurchase the property. Our objection is to the claim of Mr. Mondragon. If in addition to our opposition there is opposition on the part of the government it does not matter. In consequence we maintain that for the benefit of the objector and in order that she may obtain her right to repurchase, not only the 137 hectares but the whole of the property, the objector sets forth and declares that they belong to her and that she has the right to file an objection over the whole of the 600 hectares.

Sepulveda (Fiscal): Before presenting our objection and before the commencement of the hearing I wish to ask the counsel for the petitioner if the difference or area which appears in the petition and that contained in the original document of title which he has presented is or has been the property of Sr. Mondragon or of Doña Romana Gauzon; I should like to know from whom the petitioner claims his title before the present time.

Arroyo: The petitioner maintains that it does not belong to the United States, that it does not belong to the Insular Government, and that is the only thing which concerns the government. The government claims ownership and we maintain that it does not belong to the government.

Sepulveda: In view of that statement I should like to know why in the original application you say that the land belonged to Doña Romana and that afterwards there was presented a writing by Mondragon; and now I wish to know if you claim that it belongs to Doña Romana or to Mondragon.

130 Court: That would be anticipating the facts.

Arroyo: Before commencing the material proof I ask the court to commence with a question of law. The objector prays that in case title be granted, she be reserved the right to repurchase.

Court: I think that should be done.

Seva: I agree with the court:

Arroyo: We maintain prima facie that the right of repurchase cannot be allowed. The opposition maintains the affirmative and we wish to know what the basis of this opposition is so that we can meet it.

Court (To Mr. Seva): Are you willing to take up that matter?

Seva: I am willing in what concerns the material weight of the evidence on that point. I understand, nevertheless, that what Mr. Arroyo proposes is an actual reversal of the ordinary course of procedure in presenting evidence. It is well known that the applicant for the registration of land becomes the plaintiff and all the others are defendants. By law of procedure all provisions on the subject provide that the petitioner or plaintiff must be the first to present his evidence. It is truly an ingenious theory of Mr. Arroyo to want to draw from us the weight of certain evidence which perhaps they will need to present themselves. Consequently, I think that there is no reason why we should invert the order of procedure on this question and I venture to suggest to the court that we proceed as we ought to proceed.

Arroyo: Assuredly the petitioner must first present his proof and the objector should follow with his; but we must take into account

131 what kind of opposition and proofs it is. Sra. Romana Gauzon does not object to a portion of the land; there is no question as to the boundaries, but we allege, and prima facie we are of the belief, that the right to repurchase the whole of the hacienda San Jose has expired, and Doña Romana claims in the affirmative. This is not the usual procedure and therefore we ought to be shown the reason why the right of redemption has not expired and we will destroy this reason if necessary. Afterwards we will present our proofs of ownership.

Seva: I will speak for the last time, but will not detain the court very long. In truth I do not understand how we are going to be able to fight over this question. We do not know if the Compañia General de Tabacos de Filipinas is going to present all the proofs which show it to be the owner of the property, because in the last analysis it can still withdraw its proofs and acknowledge itself to be beaten

and in that case our opposition would be superfluous. Is it not better that they first establish their right and that then we come in with our opposition? I think that should be the way and as we have a court which is in no need of advice on the subject I will end this conversation.

Court: The court wishes to know what particular points are to be objected to; it is necessary that you come to the point at issue.

Seva: Your honor will do well to take into account that the opposition was filed in writing and consequently the points to which our opposition refers have been concretely stated. Our opposition, notwithstanding that it appears in writing, may be condensed in a few words: That the objector has still the right to repurchase;
132 that the right has not wholly expired because the time therefor has not elapsed; that this period of 12 months under which condition the property was sold at public auction, has not elapsed because it was interrupted by the judgment of the Court of First Instance, and in this sense was confirmed by the Supreme Court. The remainder of this period for the exercise of the right of redemption not having expired it has not again commenced to run and this means that this right of repurchase has been attached and is still attached by the petitioner company. The language employed by the Chief Justice of the Supreme Court in this regard when writing the decision and speaking of the right of attachment was very clear. The attachment of this right of redemption means the inhibition of the right; in other words and speaking in vulgar terms, the objector cannot exercise the right of repurchase because her hands are tied. In consequence, the objector must not suffer the consequences of the lapse of time that has not run, the period during which it was suspended nor forms the right of exercising the repurchase. The 12 months elapsed in part and by the judgment we have referred to the running of this time was suspended with regard to the persons whose property was attached. Without giving the exact days and hours, I think there still remains four months during which the right of redemption may be exercised. Consequently, during such time as the objector was unable to exercise the right of redemption and it appearing that this is due to the fact that the petitioner has not released the attachment, naturally the time of 4 months cannot commence to run and the objector declares and sets forth
133 that she is desirous of repurchasing the property. That, in substance, is the opposition. We do not object to the petitioner obtaining title, but only with a reservation that the decision shall state that it is charged or incumbered with the right of redemption which the objector still possesses.

Arroyo: I ask the court to declare a general default with the exception of the two oppositions presented.

Court: I hereby declare a general default with the exception of the Insular Government, represented by the fiscal, and Sra. Romana Gauzon, represented by Attorney Seva.

Arroyo: It is agreed between the parties that the Compañia General de Tabacos de Filipinas is a legal entity doing business in the Philippine Islands in accordance with the laws in force. (Messrs.

Seva and Sepulveda agree). I make a formal offer of this exhibit B appearing in the record; it is a royal title issued by the government to Romana Gauzon, in which it appears that the area of the said hacienda San Jose at the time the title was issued, at least legally, was 465 hectares and some centares. I make a formal offer of this Exhibit D, a certificate of the provincial sheriff dated September 12, 1906, referring to the auction sale of the hacienda San Jose inscribed in the registry of deeds; Exhibit E, another certificate of the then provincial sheriff, Manuel Lopez, regarding the right to repurchase the said hacienda. I also offer this document, which, however, is not marked as an exhibit, issued by the registrar, and for its identification we might mark it as Exhibit F; and the other documents attached to the record, such as correction of the plans, notices to the registrar of deeds that this application has been presented, etc.

134 Sepulveda: As to Exhibit B I have no objection to offer as it is a royal title. I have no objection to make to Exhibit D either. I object to the admission of document E because it is not recorded in the registry of deeds. In this document it appears that a copy was sent to the registrar but that he did not receive it. As to Exhibit F, as it is a certificate of the same registrar of deeds we admit it and the same with regard to all the rest of the documents.

Seva: We have no objection to make to Exhibit B nor to Exhibit D. We specially call the attention of the court to the same in which the right to redemption is specifically mentioned. With regard to Exhibit E, which is claimed to be the final instrument which the law provides that the sheric shall execute in favor of the purchaser at the sale, we are obliged to oppose it and object thereto; this is because at the foot of page 2 of that document it says: "The said sheriff by these presents sells, transfers, and in perpetuity delivers to the said purchaser (the petitioner) all rights, interests, ownership, and all rights of action which the said Romana Gauzon has or may have in the said property, its appurtenancies, and the improvements described as being thereon." Claiming, as we claim, the right of redemption we cannot agree that the ownership has been completely transferred and consequently, the sheriff, in extending the said document in favor of the petitioner company, acted in excess of his jurisdiction, thus passing over all the decisions of the Supreme Court, and we object for that reason. With respect to Exhibit F we have no objection to offer.

135 Court: The documents are admitted.

Seva: I should like to have the court state that the question of the admissibility of all these documents will be passed upon after we have presented our proofs in support of the opposition, and I except to the document E which the court has admitted.

Mr. Arroyo, attorney for the petitioner, offers as proof the testimony of the following witnesses.

Testimony of Witness Carlos A. Ferrandiz.

After having been duly sworn he testified as follows: 35 years of age, married, manager of the Iloilo branch of the Compañia General de Tabacos de Filipinas, a resident of the same municipality and province.

Arroyo: Are you the manager for the Compañia General de Tabacos in Iloilo?

A. Yes, sir.

Q. Were you the manager on the 22d of June, 1908, in Iloilo?

A. Yes, sir.

Q. Whose signature is this that appears at the right of this document Exhibit C? (Showing it.)

A. Mine.

Q. And whose is it that appears at the left of the same document?

A. That of Sr. Andres Mondragon.

Q. were you present when Mr. Andres Mondragon signed it?

A. Yes, sir.

133 Q. And whose signature is this at the bottom?

A. That of the company's notary.

Arroyo: Nothing more.

Seva and Sepulveda: No cross-examination.

Testimony of the Witness Eduardo Bugton.

After being duly sworn witness testified as follows: 46 years of age, married, manufacturer, resident of the municipality of San Carlos, Occidental Negros, P. I.

Arroyo: How many years have you lived in the municipality of San Carlos?

A. About 28 years.

Q. Do you know the hacienda San Jose in the barrio of Subon-cogon?

A. Yes sir.

Q. How long have you know- said hacienda?

A. Since I first came here.

Q. Do you know a person by the name of Leon Vega?

A. Yes sir.

Q. What was he on the hacienda San Jose?

A. He was the former owner.

Q. Do you know one Leon Mapa?

A. Yes sir.

Q. And Magdalena Masaba?

A. I know her also.

Q. And Gregorio Mahinay, do you know him?

A. Yes sir.

137 Q. And Francisco Solidario?

A. I also knew him.

Q. And Severo Uyog?

A. I likewise knew him.

Q. Do you know if Leon Mapa owned any land near the hacienda San Jose when you first came to San Carlos?

A. Yes; I know that he worked a piece of land there.

Q. How large was the land which Leon Mapa worked?

A. Fairly large.

Q. Could you say how much, more or less? How large a tract was it?

A. About fifty hectares.

Q. Do you know what land adjoined that of Leon Mapa on the south when you first came here?

A. It adjoined the hacienda of Leon Vega.

Q. What is that hacienda now called?

A. San Jose.

Q. How long was Leon Mapa in possession of this land which you say you knew that he had?

A. I can't say exactly how many years, but from the time that I arrived here, 28 years ago, he worked this land.

Q. How did you come to know this land?

A. Because formerly when I came here I dealt in corn and bought corn from him; that was how I came to know him.

Q. Have you been on the ground in person?

A. Yes sir.

138 Q. Many times, once, or how often?

A. I never counted. About ten times, more or less, each year.

Q. And besides Leon Mapa, during that period of time was there any other persons who took off any of the produce of the said land?

A. His children.

Q. But any persons outside of the family?

A. I don't know about that. I only know that a lot of people worked there and that they were his children.

Q. Do you know if the land belonging to Leon Mapa actually passed into the hands of other persons?

Seva: I object to the question, because the best proof is the deed of transfer.

Arroyo: I speak of the possession of Leon Mapa, if any other person possessed his land afterwards.

Court: Objection overruled.

A. Leon Mapa sold this land to Mondragon in his lifetime.

Seva: Now I object to the answer because the sale is not possession. I was told that this question referred to the possession; now he is speaking of a sale and I again object.

Court: Objection overruled.

Seva: With our exception.

Arroyo continues: After what you related did Mondragon possess the land that you spoke of?

A. Yes sir.

Q. At the present time have you seen any boundary marks on the land of Leon Mapa?

139 A. When it was surveyed by the Compañía Tabacalera it was included in the survey.

Q. Do you know who possessed the land at the side of Leon Mapa's land toward the east when you came here 28 years ago?

A. Magdalena Masaba's husband and Gregorio Mahinay.

Q. Do you know if Magdalena Masaba took off the produce?

A. Yes, because they were the ones who worked the land.

Q. How many years do you know of your own knowledge that Magdalena Masaba took off the produce of the land?

A. Since I first came here, without interruption.

Q. And what was the size of the land from which Magdalena Masaba took off this produce?

A. It was pretty large; it was about the size of the land held by Leon Mapa.

Q. And while it was held by Magdalena Masaba, did any other person outside of herself and her family, make any claim to it and in fact take possession of the said land?

Seva: I object to the question on the ground that this witness has not shown any knowledge with regard to disturbance of the possession of this land unless it be that the witness is the justice of the peace.

Aroyo: That is exactly the matter under investigation. We claim to prove that the possession of Magdalena Masaba was disturbed by some person other than a member of the family.

Court: Objection overruled.

A. Nobody that I know of.

140 Q. And you have been on the land of this Magdalena Masaba?

A. Yes sir.

Q. For what purpose?

A. Because I dealt in corn. I used to go over this land because it was not far away; it was near by.

Q. And what produce did Magdalena Masaba derive from it?

A. Corn.

Q. Every year?

A. Yes sir.

Q. And do you know if the possession of the land held by Magdalena Masaba was afterwards transferred to anybody else?

A. No, because she sold it to Andres Mondragon.

Seva: I object to the answer and I ask that any statement which refers to the transfer by sale should be stricken out.

Court: Objection overruled.

Seva: Note my exception.

Q. And after Mondragon, now, at the present time, have you seen anyone's boundary marks there on Magdalena Masaba's land?

A. That was included when it was surveyed by the Compañía Tabacalera.

Q. And on the eastern side of Magdalena Masaba's land, do you know who owned the adjoining land, what property lay adjacent to it when you came to San Carlos?

A. Francisco Solidario.

Q. Do you know Francisco Solidario?

A. Yes sir.

141 Q. And do you know how many years Francisco Solidario held possession of the land adjoining that of Magdalena Masaba?

A. Within the same period of time and when I came here it was being worked by Francisco Solidario.

Q. Do you know if Francisco Solidario worked it every year?

A. Yes sir.

Q. And what did Francisco Solidario plant on it?

A. Corn.

Q. Did you buy any corn from Francisco Solidario?

A. Yes.

Q. Often or seldom?

A. Often.

Q. And before Francisco Solidario, who was the one that adjoined Francisco Solidario toward the south?

A. The same hacienda San Jose.

Q. How large was Francisco Solidario's land?

A. It was not as large as that belonging to Magdalena; it was probably about 15 hectares, more or less.

Q. And at the present time, have you seen any boundary marks on the land?

A. Yes; there are monuments there of the Compañía Tabacalera.

Q. And before the monuments of the Compañía Tabacalera were put up, do you know if any other person had the land?

A. He sold it to Andres Mondragon.

Seva: I again object to the statement regarding the sale.

Court: Objection overruled.

Seva: Note our exception.

142 Arroyo: To avoid interruption, let it be stated that when witness speaks of the sale, counsel for the objector will object, the court will overrule, and the objector will except.

Q. Did Andres Mondragon at any time possess this land of Francisco Solidario?

A. Yes; when he transferred it, Mondragon took possession of it.

Q. But did you witness Mondragon's possession?

A. Yes; and Mondragon's people.

Q. Who owned the land at the east of Francisco Solidario?

A. Always running toward the right, the land was formerly mine.

Q. And from whom did you acquire it?

A. I bought it from the late Gregorio Mahinay.

Q. What sized tract?

A. About 15 hectares more or less.

Q. Did Gregorio Mahinay hold or work the land before you bought it?

A. Yes sir.
Q. What did he plant on it?
A. Corn.
Q. Did you also purchase corn?
A. Yes; that is the reason why I came into possession of the land, because he owed me money.
Q. And how long did you hold the land?
A. I cultivated the land for about 10 years, but I held possession before that.
143 Q. And you, what did you plant on it?
A. Corn.
Q. Every year?
A. Yes, every year.
Q. Did any other person interrupted your possession?
A. No one made a claim on it.
Q. And after you, what was done with this land?
A. I also sold this land to Andres Mondragon, because I had land in Sipaway.
Q. And whom did you formerly adjoin on the south?
A. The land which I did not possess belonged to the hacienda San Jose; that land adjoined mine.
Q. Do you know if on your land at the present time there are any monuments of other persons?
A. Yes; the survey of the Compañía Tabacalera also passed over it and they erected monuments that were included in their survey.
Q. Who owned the land on the side of you to the right, or toward the east?
A. Severo Uyog.
Q. Did you know that man?
A. Yes sir.
Q. For how long did you know of the possession of Severo Uyog?
A. He was the one who worked this land from the time I arrived.
144 Q. And then who was the party that adjoined the land of Severo Uyog on the south?
A. The hacienda San Jose.
Q. Did any other person outside of his family possess the land during the time that you knew it?
A. Formerly, when it was in his possession, no other person worked it with the exception of Severo Uyog; but I know now that it is no longer in his possession.
Q. Why is it no longer in his possession?
A. Because he told me that he had sold it to Andres Mondragon.
Seva: I object to the answer as being hearsay.
Q. But you saw Andres Mondragon in possession of the land after that occasion?
A. Yes sir.
Q. And do you know if monuments of any other person were erected thereon?

A. It was also included when the Compañía Tabacalera made its survey and they erected monuments.

Arroyo: That is all.

Sepulveda (Fiscal): In what year did you buy the land of which you are in possession?

A. At the end of the year 1895.

Q. And from that year until what year did you work it?

A. I ceased working the land 5 years ago.

Q. How much did you pay for the land that was occupied by you?

A. P100.00.

145 Q. And how much did you sell it for?

A. I sold it to Andres Mondragon for P300.00.

Q. Do you remember the year and the date on which you sold it to Andres Mondragon?

A. From what I recall, the Compañía Tabacalera had not made its survey when I sold the land, and I understand that it was precisely the year in which the survey was made.

Q. And from the time that you purchased this land up to the time that you sold it, did you constantly cultivate it or did you fail to cultivate it for some time?

A. I constantly worked the land with my men from the time that I purchased it until I sold it. I had ten men working.

Q. But you did not personally work it but worked it by means of your tenants?

A. Yes sir; my "taos" (men) worked the land.

Q. Do you remember the names of these men?

A. I do not remember the names of those who died, but I remember some of them.

Q. Why? Are they on the land at the present time?

A. I cannot say if the people who did not die continued to work there because after I sold the land I turned it over to Mr. Andres Mondragon.

Q. Were you able to plant the whole of the land that was occupied by you or not?

A. Yes sir, I planted the whole of the land.

Q. What did you plant? Corn, according to your statement?

A. Yes sir; only corn.

146 Q. And how much corn did you gather in the first year?

A. It was not the same every year. There were years when I gathered 150 cavanes.

Q. Was your share the half of the total product of all the land occupied by you?

A. Yes sir.

Sepulveda: That is all.

Seva (on cross-examination): Where were you when the survey was being made by the Compañía General de Tabacos?

A. I was here in town.

Q. Do you remember when it was surveyed?

A. Yes I remember, because I remember it was not a year after I sold the land to Mondragon.

Q. On what side of the land are these monuments that you say are now on Mapa's land? Are they on the south, north, east, or west of Mapa's land?

A. They are on the north.

Q. How many monuments are there on the east of his land?

A. I cannot count them sir, but I could have done so if I had gone along with the surveyors.

Q. So that you cannot say exactly how many monuments there are on Mapa's land?

A. I cannot say exactly, but I can affirm that there are monuments.

Q. Are you sure that there are any monuments on the east of Mapa's land?

A. Yes sir, there are some.

147 Q. And these monuments indicate that the land belonging to the Compañia General de Tabacos, or that that which was included by the Compañia General de Tabacos extended that far?

A. Yes sir, they placed the monuments there where they surveyed.

Court: What are these monuments made of?

A. They are of wood.

Mr. Seva (continues): Tell us, is it true that this Leon Mapa was a herder on the hacienda San Jose?

A. I cannot say with regard to that, but I can say that when I went to his house to buy corn I did not see him herding any cattle.

Q. Where is Leon Mapa now, do you know?

A. I have been told that he is dead.

Q. Do you know how long since?

A. I learned last year (1910) that he had died but still I do not know what was the date of his death.

Q. Do you remember how long you saw Mapa in the possession of this land?

A. I have already said that he was in possession of the land from the time that I arrived in San Carlos.

Q. But my question is, Up to what time did he have possession of these lands?

A. As I have said, while I had lands there he was working his, and lastly, when we met we said to each other "So that you have sold your land." "Yes," I answered, "and we are also selling ours."

148 Q. Up to what time was Leon Mapa in possession of land at the place where you say he possessed it?

A. As I said, I arrived in San Carlos 28 years ago and he was then in possession of the land; he continued in possession of it until the time I sold mine to Andres Mondragon.

Q. And you, when did you sell to Mondragon?

A. About five years ago; I sold it before the Compañia General de Tabacos had made its survey.

Q. That was 5 years ago?

A. Yes, sir; 5 years.

Q. So that a very short while afterwards, immediately after Leon

Mapa sold, was when the Compañia General de Tabacos made its survey?

A. I lately heard of it through Leon Mapa. He said to me: "So that you have sold your lands to Mondragon? We have also sold ours."

Q. What was the average amount of corn that you purchased from Mapa?

A. When I bought corn at that time, I remember on one occasion I bought 7,000 ears which were brought in from two houses.

Q. Whose were those houses?

A. His sons'.

Q. Tell us how many monuments there are at the present time on the south of Mapa's land.

A. There are no monuments there.

Q. You said that Mapa sold the land which he possessed to Andres Mondragon; who told you that, Mondragon or Mapa?

149 A. Mapa told me here in town on one occasion when we met.

Q. Did you at any time see the deed of sale of these lands which was executed between these two parties?

A. I did not see it; I cannot say that I have seen it.

Q. How long after the survey by the surveyor of the Compañia General de Tabacos was it that you visited these lands?

A. In that year, a number of years ago, there being on Mondragon's land a person who owed me some money, I went there to collect it and I was surprised to see some wooden monuments erected on the land.

Q. How long after the survey was it that you paid this visit?

A. The same year.

Q. But what year was it?

A. It was 5 years ago.

Q. So that it is 5 years since the Compañia Tabacalera had these lands surveyed?

A. Yes sir, it is about 5 years; the survey was made after I sold my lands.

Q. And this is the survey that you say included all of this land?

A. I was not present when the survey was made, but when I saw the monuments I inquired what they meant and was told that they were the monuments that were placed during the survey by the Compañia General de Tabacos.

Q. And the lands belonging to Mapa were included within these monuments that were put up at the time of the survey 5 years ago, is not that so?

150 A. Yes, sir.

Q. Do you know the hacienda San Jose?

A. Yes sir.

Q. Is it not true that there is a parcel of land on the hacienda that is called the pasture?

A. I do not know.

Q. But nevertheless you know that the estate always had some

land, a part of its land, part of its area that was used as a pasture for the hacienda, do you not?

A. So far as I know, before the Compañia Tabacalera went in, a part of the land was used for the pasture of cattle.

Q. Where was this part located, do you remember?

A. Near the River Gigalaman.

Q. At the foot of the mountain?

A. Below the part where Leon Mapa planted dry corn.

Q. Was the land belonged to Mapa then on the side of the mountain or on the plain?

A. Part of it was on the side of the mountain and part on the plain.

Q. But if I remember correctly, you said that nobody disturbed Mapa in the possession of the lands, did you not?

A. Not while it was in his possession.

Q. Was there then any other disturbance at any other time?

A. There was not.

Q. Good; and how do you know that Mapa was not disturbed in his possession?

A. So far as I know, nobody disturbed him.

151 Q. If anyone had disturbed Mapa in his possession, if Mapa held possession under any other title than that of exclusive ownership, would you necessarily have known it or not?

A. I do not know if anyone disturbed him; if I knew I would say so. I do not know. If he had been disturbed and had said so, I should have known it. I do not know of any such disturbance.

Q. Were you justice of the peace of the pueblo in Mapa's time?

A. I was not justice of the peace.

Q. Were you capitan municipal or did you in any other way have to perform duties that would unavoidably have caused you to know of any such disturbance of Mapa's possession?

A. In Spanish times I was cabeza de barangay.

Q. As such, I suppose you would not be obliged to know of any disturbances in the possession of Mapa's land?

A. What should I know about that?

Q. And I figure that your knowledge with the respect to the undisturbed possession of all the other persons to whom you have referred, such as Magdalena Masaba, Gregoria Mahinay, Francisco Solidario, and Severo Uyog, would also be a knowledge of the same sort as the knowledge you possess with regard to Leon Mapa, is not that so?

A. Yes sir.

Q. Tell us if the dividing line between the valley and the mountain on the hacienda San Jose is still in the same place as it was when you knew it 28 years ago, or if there have been any geological movement or earthquake to change it?

152 A. Yes sir, there is.

Q. Now then, I will ask you if this mountain which you say is on the hacienda is still in the same place as when you came, or whether it has retreated or advanced by reason of any physical movement?

A. It continues to stand in the same place.

Q. Have you seen any instrument of transfer, sale, cession, or anything of that sort, from any of these persons in favor of Mondragon affecting the lands which they possess?

A. I have not seen any; only by hearsay from the owners themselves who told me.

Q. Do you know when Mr. Mondragon first acquired lands here in San Carlos?

A. What I know is that I sold some land to Mr. Mondragon 5 years ago, and in my opinion the others also sold land to said Mondragon because they told me so.

Q. Besides these persons you have mentioned, that is to say, Magdalena, Gregorio, Francisco, Severo, and Leon Mapa, were there no others who owned either large or small parcels of land adjoining the hacienda San Jose on the South?

A. Yes sir; day laborers and their relatives possessed or rather worked the lands because they had their relatives as laborers.

Q. No one but these persons?

A. Yes sir. (Meaning no one.)

Q. When you acquired this land from Gregorio Mahinay, did you get it through a written document or was the sale by work of mouth.

153 A. We drew up a receipt, nothing more.

Q. Where is this receipt?

A. Mondragon asked me for it when I sold him the land.

Q. So that Mr. Mondragon has it, has he?

A. Yes, he ought to have it, because I delivered it to him when I sold him the land.

Q. Is it not true that Francisco Solidario was the sugar boiler on the hacienda San Jose?

A. I do not know that he was a sugar boiler.

Q. Do you know whether Francisco Solidario was a quarryman or a mason on the said hacienda?

A. Yes sir, I know it.

Q. Is it not true that Francisco Solidario also had a portion of sugar land on the hacienda San Jose rented on shares?

A. Yes sir.

Q. And that Severo Uyog was also a tenant on shares raising corn on the hacienda San Jose?

A. I do not know.

Q. Was not Gregorio Mahinay a tenant on shares, raising corn?

A. I do not know that either.

Arroyo: I present in evidence the original of the copy marked Exhibit C which is attached to the record and I also desire to present the judgment entered in civil case No. 85, Compañia General de Tabacos de Filipinas, plaintiff, versus Romana Gauzon, defendant, foreclosure of a mortgage, by the Court of First Instance of Occidental Negros, and with that I rest.

154 Sepulveda: I object to the first document because it in no way mentions the area of the land which was alienated, which was sold by Mr. Mondragon to the Compañia Tabacalera.

Seva: I have the same objection to make, that is to say, I adhere to the objection made by the fiscal and make it my own; I furthermore maintain that the document is immaterial because by itself it is insufficient to transfer ownership to any entity by Mr. Mondragon, seeing there is no necessary sequence of title, aside from the vagueness with regard to the area of the property, and for this reason I oppose its admission.

Arroyo: With regard to the fiscal's first point, that the document does not specify the number of hectares, all of us know, and still more the fiscal should know, that the Civil Code provides for sales of real estate at public auction; that when the number of hectares contained in a parcel of real estate is not given only the question of boundaries is fixed and this contract is one of the sort provided for in the Civil Code. Mr. Mondragon does not say how many hectares there are. He says here that for lack of proper antecedents it is difficult for him to give the number of hectares and, by reason of the lack of these antecedents, and of being able to exactly determine the superficial area of the property, he has sold it as it stood, that is to say, as it is described in the plans of the Compañia General de Tabacos, and it was sold up to where the boundaries are indicated on the plan, although he cannot exactly determine this strip; so these sales at auction are made in benefit of or
155 in prejudice to the purchaser. As to the document being immaterial as Mr. Seva alleges, it is perfectly material because the original title specifies 400 hectares and the balance was bought by the petitioner from Sr. Mondragon.

Seva: Then with permission of the court, it is to be understood that Mr. Mondragon sold to the petitioner so many hectares as they are attached to the property sought to be registered, up to 465 hectares as given in their royal title. Consequently, Mr. Mondragon had sufficient data from which to know the amount which he sold. But it is a very convenient matter to sell an indeterminate thing, so much so that in this document it says the actual boundaries of the hacienda San Jose on the north, including the strip referred to, are indicated by stone monuments erected at the time of the survey of the hacienda. That is to say, that it is nothing else than an act accomplished by Mr. Mondragon in selling to the Compañia General de Tabacos de Filipinas.

Arroyo: All this we have just heard is nothing more than a literary exposition. Let us go to the legal question. Mr. Mondragon, when he made this sale, knew neither the superficial extent nor what area was covered by the original title. Mr. Mondragon as vendor, claimed to be the adjoining owner on the north of the hacienda San Jose. It is evident that there is a parcel of land which belongs to Mr. Mondragon and which he maintains to be his, and this strip of land, without specifying its area because the area on the plan was not known, nor was that of the title, matters which were unknown by Mr. Mondragon, since this gentleman sold at a fixed price in accordance with the provisions of the Civil Code. And whether Mr. Mondragon has or has not any land
156 there, is a matter for the fiscal to show.

Seva: I insist upon the question that it appears that Mr.

Mondragon has not shown the amount which he sold, because he did not know how much the plan of the hacienda San Jose would turn out to be. What he ought to have known is the amount that he sold, and not the amount contained in a part of the hacienda San Jose. Mr. Mondragon had no need to know the area of the hacienda San Jose. What he ought to have known is how much he sold and he should have set that amount forth so that all the world might know, in order that it might be recorded in the registrar of deed, and that the inscription would be of value. I must also state as an objection to this writing that the objector also claims to be the owner of the land that Mr. Mondragon claims to have transferred to the Compañia General de Tabacos, and she claims it by right of possession and uninterrupted cultivation since the year 1884, that is to say, for 26 years.

Arroyo: That is the reason, but what is the defective part of the instrument? That was not the legal objection or opposition.

Court: The document is admitted.

Seva: Note my exception.

Sepulveda: Note my exception also.

Arroyo: I close my proofs, and later will present the certified copy that I have referred to.

The parties agree that the copy of the judgment in civil case No. 85 is the same as the original.

Court: Admitted without objection.

Sepulveda: I do not present any proofs because so far I do not see that the difference of area of the land has been proved.

157 *Proofs of the Objector Doña Romana Gauzon, Widow of Vega.*

Seva: I am going to present in evidence this document, which is a copy duly certified by the clerk of the Court of First Instance of Occidental Negros, filed in civil case No. 85, brought by the Compañia General de Tabacos de Filipinas against Romana Gauzon, widow of Vega, for the foreclosure of a mortgage.

Arroyo and Sepulveda: No objection.

Court: It is admitted as Exhibit No. 1.

Seva: I also present in evidence a copy, duly certified by the clerk of the court, of an order issued on the 27th of September, 1905, in the same civil case No. 85—Compañia General de Tabacos de Filipinas vs. Romana Gauzon, widow of Vega—for the foreclosure of a mortgage. This order shows that Don. Juan de Pomar, a resident of San Carlos, was appointed receiver for the property of the defendant Romana Gauzon and that he was designated by counsel for the plaintiff for the said position.

Arroyo: I object to the admission of this document on the grounds that it is immaterial and irrelevant.

Court: It is admitted as Exhibit No. 2.

Arroyo: Note my exception.

Seva: I also make a formal offer of a copy, duly certified by the Court of First Instance of this district, of the oath of office taken

by the receiver in civil case No. 85—Compañia General de Tabacos de Filipinas vs. Romana Gauzon, widow of Vega. This oath is dated October 4, 1905, and it was sworn to on the same day before the justice of the peace.

158 Arroyo: The same objection and exception.

Court: It is admitted at Exhibit No. 3.

Seva: I also offer as proofs copies, duly certified by the clerk of the Court of First Instance of this province, of the bonds which were furnished by the plaintiff Compañia General de Tabacos de Filipinas in order to secure the appointment of a receiver in civil case No. 85 for the foreclosure of a mortgage and the bond furnished by the receiver himself, Juan de Pomar, on entering on the performance of his duties; and an order, a copy of which I have already presented, as well as a note entered on the orders of that proceeding, in which the receiver was issued a copy of the order dictated on September 27, 1905, in this civil case No. 85.

Arroyo: The same objection and exception.

Court: It is admitted as Exhibit No. 4.

Seva: I also offer in evidence a certificate of the clerk of the Court of First Instance of this province, in which it appears that according to the orders issued in case No. 85, Don Juan de Pomar, on the 27th of September, 1905, was appointed receiver for the property of the objector herein, Doña Romana Gauzon, and that the said Don Juan de Pomar has not been relieved from duty as such receiver up to the present time. The date of this certificate is December 29, 1910.

Arroyo: The same objection and exception.

Court: It is admitted as Exhibit No. 5.

Seva: We also make our own, and in this point we are agreed with the petitioner, the proof which is marked as Exhibit D

159 of the petitioner and we ask that for our side, if necessary, it be marked as exhibit No. 5.

Court: It is not necessary to mark it; it is part of the proof of the petitioner.

Seva: I also submit to the court and offer as proof another certificate of the Court of First Instance of Occidental Negros, by which it appears that the orders issued in this case No. 85 do not show that the Court of First Instance of this province authorized Don Juan de Pomar, receiver for the property of the defendant Romana Gauzon, widow of Vega, to deliver the hacienda San Jose to the Compañia General de Tabacos de Filipinas, or to any other person in its name, the real estate that was sold at auction by the sheriff of this province on the 12th of September, 1906, and adjudicated to Don Manuel Couto in representation of the Compañia General de Tabacos de Filipinas. This certificate bears the same date of the 29th of December, 1910, and I ask that it be marked as Exhibit No. 6 of the objector.

Arroyo: Same objection and exception.

Court: It is admitted as Exhibit No. 6.

Seva: I also offer as proof another certificate of the same court, from which it appears that the orders issued in the case, or civil

case No. 85, tried in that court, do not show that the provincial sheriff, or any of his deputies, delivered the hacienda San Jose to the Compañia General de Tabacos de Filipinas or to any other person in its name, this being the same property that was sold on the same date, as appears in the foregoing exhibit and that was adjudicated to Mr. Couto as representative of the Compañia General de Tabacos de Filipinas.

160 Arroyo: The same objection and exception.

Court: It is admitted as Exhibit No. 7.

Seva: I also offer as proof another certificate of the clerk of the Court of First Instance of this province, which is a certificate of the notice by the sheriff of Occidental Negros to Doña Romana Gauzon dated March 12, 1907, in case No. 249, entitled Compañia General de Tabacos de Filipinas vs. Romana Gauzon, widow of Vega, for a sum of money, by which the right to repurchase the hacienda San Jose in Sibungcogon was attached, as was also the sugar cane on the plantation.

Arroyo: The same objection and exception.

Court: It is admitted as Exhibit No. 8.

Seva: I also offer as proof a certificate issued by the clerk of the Court of First Instance of this province, as authentic copies of the decision rendered by the Court of First Instance of Occidental Negros and by the Supreme Court of the Philippine Islands in civil case No. 249, Compañia General de Tabacos de Filipinas vs. Romana Gauzon, widow of Vega, for a sum of money. These decisions are pertinent to the case even though they are not objected to, because they refer to the right of repurchase which we claim and maintain to still have in this property.

Arroyo: The same objection and exception.

Court: It is admitted as Exhibit No. 9.

Seva: I offer as proof a certificate issued by the clerk of the Court of First Instance of Occidental Negros as an authentic copy of a writing presented September 9, 1907, in civil case No. 85,

161 Compañia General de Tabacos de Filipinas vs. Romana Gauzon, widow of Vega, for the foreclosure of a mortgage, which prays that the court order the receiver Don Juan de Pomar to proceed at once to grind all the sugar cane on the hacienda San Jose belonging to the defendant and which was taken charge of by the said receiver.

Arroyo: The same objection and exception.

Court: Admitted as Exhibit No. 10.

Seva: I offer in evidence another certificate of the clerk of the registrar of deeds, and that the inscription would be of value. I a writing dated December 4, 1907, presented in civil case No. 85, foreclosure proceedings. This is a petition by the objector in which she prays the court to order the receiver to present within a reasonable time an itemized account in which should be included the sugar derived from the crops of the tenants on shares, in order that the defendant might make such objections thereto as she might deem necessary.

Arroyo: The same objection and exception.

Court: Admitted as Exhibit No. 11.

Seva: I present in evidence a certified copy issued by the clerk of the Court of First Instance of this province, or an order issued by said court in civil case No. 85, in which the receiver, Mr. Pomar, is ordered to proceed to grind or make profitable use of any cane belonging to and attached from the said objector that is ready for grinding.

Arroyo: The same objection and exception.

162 Court: It is admitted as Exhibit No. 12.

Seva: I also offer in evidence a certified copy issued by the same official of a ruling or order of the Court of First Instance of this province, dated November 23, 1907, in civil case No. 249, for a sum of money, between the petitioner herein Compañia General de Tabacos de Filipinas and the objector Doña Romana Gauzon, widow of Vega. By the said ruling or order, the receiver Pomar is ordered to file with the court, within the period of 15 days counted from the day on which he received notice of the order, an itemized account of his transactions regarding the sale of the sugar produced by the cane which was attached from the defendant.

Arroyo: The same objection and exception.

Court: It is admitted as Exhibit No. 13.

Seva: I also present the certified copy of an order issued on December 7, 1907, by the Court of First Instance of this province in civil case No. 85, whereby the said receiver is ordered to file with the court of this province within a period of 20 days dated from the day on which he was notified, a proper detailed account which should include the sugar produced by the crops of cane grown by the tenants on shares of the said defendant, the herein objector, which cane was ground.

Arroyo: The same objection and exception.

Court of First Instance of Occidental Negros which is the copy of

Seva: I offer in evidence a certified copy by the clerk of the Court of First Instance of Occidental Negros of a writing

163 presented by the herein objector, and in her name, by me, in civil case No. 85, in which the court is prayed to order the receiver, Juan de Pomar, to file with the court, within a non-extendible time of 15 days, an itemized account, supported by vouchers, of the total number of piculs of sugar that were produced by all the cane which was on the hacienda when the said gentleman was appointed receiver therefor, and also an itemized statement of the expenses incurred by reason of the care and cultivation of the cane, transportation, commission and other outlay caused by the sale of the sugar, without including in said account any claim or claims of any of the parties to this litigation.

Arroyo: The same objection and exception.

Court: Admitted as Exhibit No. 15.

Seva: I present a copy, also certified by the clerk of the Court of First Instance of this province, of a writing presented by Mr. Arroyo, as attorney for the plaintiff in civil case No. 85, petitioner in the present case, dated July 3, 1909, in answer to the foregoing Exhibit No. 15; this document speaks for itself and will be made

the subject of comment during the course of the argument in these proceedings.

Arroyo: Same objection and exception.

Court: Admitted as Exhibit No. 16.

Seva: I present in evidence another certificate of the clerk of the Court of First Instance of this province which is an order of the said court dated July 15, 1909, in civil case No. 85, which
164 orders the receiver Mr. Pomar to file with the court, within a period of 15 days counted from that on which he received a copy of the said order, an itemized account, supported by vouchers, of the total number of piculs of sugar that were produced by all the cane which was on the hacienda when the said gentleman was appointed receiver therefor, and also an itemized statement of the expenses incurred by reason of the care and cultivation of the cane, transportation, commission and other outlay caused by the sale of the sugar, without including in said account any claim or claims of any of the parties to this litigation.

Arroyo: The same objection and exception.

Court: Admitted as Exhibit No. 17.

Seva: I also offer in evidence a certificate of the clerk of the Court of First Instance of this province which states that Juan D. Pomar, receiver appointed by the Court of First Instance of this province in civil case No. 85, appealed to the Supreme Court of the Philippine Islands from the judgment entered by said trial court on the 22d day of May of the year 1909 (and I ask that the word "May" be underscored), on the question or incident of the accounts filed as such receiver and that up to the present time it does not appear of record that the said appeal has been decided by the said Supreme Court. This certificate was issued on December 29, 1910; it contains a slight mistake or error which I will now endeavor to explain and will now testify on the subject.

Arroyo: Same objection and exception.

Court: It is admitted as Exhibit No. 18.

Thereupon the court took the following:

165 *Testimony of the Witness Agustin P. Seva.*

After being duly sworn he declared as follows: 35 years of age, married, attorney-at-law, resident of the municipality of Bacolod, province of Occidental Negros, P. I.

Witness: This certificate, like all, or at least the greater part, of those presented in these proceedings, was issued by the clerk of the Court of First Instance of Occidental Negros, as may be seen in the documents themselves, on December 29, 1910. Toward the end of last year and at the beginning of the present one there was held in that province a provincial exposition which completely absorbed the attention of nearly all of the officials who represented the province in said exposition. * * *

Arroyo (interrupting): I object to the testimony of the witness because all of it is immaterial.

Seva (the witness): I have to explain why the date appears to be May 22 and not September 22. (He continues with his testimony.) On account of this exposition the same judge of the Court of First Instance ordered all the personnel of the office of the clerk of the court to assist in the work of installing the exposition; so it happened that the certified copies which we have presented were made out by private clerks or strangers to the court. Owing to this haste, this error was not noticed, that is to say, that the Court of First Instance rendered judgment in the case or incident referring to the receiver's accounts on the 22d of May 1909. Being in San Carlos when I noticed this mistake I immediately sent a telegram to
166 the clerk of the said court dated here the 8th of January, which I also offer in evidence in connection with said document. This telegram was duly received by the clerk and he answered me as appears in the telegram. As it is very short I will read it to the court. "You are authorized to amend authority by changing September to May."

Arroyo: I do not agree to the amendment to the certificate by evidence of that sort; it is not a legal method.

Seva: I offer in evidence a certificate issued by the provincial fiscal of Occidental Negros in his capacity or character of registrar of deeds, referring to the encumbrances charged upon the property which is the object of the petition. Everything which concerns the attachment of the right of repurchase appears therein.

Arroyo: The same objection and exception.

Court: We admit it as Exhibit No. 19.

Seva: I present in evidence a certificate of the clerk of the Court of First Instance of this province which is a true and correct copy of the decision rendered by said court on August 29, 1907, in civil case No. 249 on a petition of the objector herein, Romana Gauzon, to release the attachment levied upon the right of repurchase, and this order will show that the release of the said attachment was denied for the very reason that the Compañia General de Tabacos de Filipinas opposed it.

Arroyo: The same objection and exception.

Court: Admitted as Exhibit No. 20.

Seva: Lastly, I present in evidence a certificate of the clerk of the Court of First Instance of Occidental Negros, dated De-
167 cember 29, 1910, in which he certifies that the record of case No. 85 of said court does not state that the final record of the action prescribed by section 261 of the Code of Civil Procedure, which is one of the sections which fall under the title of "Manner and method of commencing mortgage actions" had been made; and on account of the haste with which it was necessary to proceed in Bacolod and for the reason that it is to be seen in the petitioner's proofs themselves that there was something on foot with regard to somebody's right of repurchase, yet nevertheless, the objector herein was not notified in any way except by the Official Gazette. We, in view of our ignorance with regard to the date of the hearing and in view of the clerk's haste and our own, when we came we failed to

bring along a certificate from the clerk of the Court of First Instance of Occidental Negros which showed that up to that time the preliminary attachment levied by the petitioner on the right to redeem the said property by the lady objector had not been released. This certificate, in a negative sense, we offered to the court as soon as we arrive at Bacolod.

Arroyo: The same objection and exception.

Court: Admitted as Exhibit No. 21.

Upon request of the parties and in view of the lateness of the hour, the court continues the hearing until 2 o'clock this afternoon.

Heading and Title Omitted.

Session held on January 6th, 1911, in the municipality of San Carlos, province of Occidental Negros, presided over by the Honorable Higinio Benitez, auxiliary judge.

168 The session was opened at 2 o'clock p. m. by the deputy sheriff, Vicente Insua acting as deputy clerk and the undersigned as stenographer. The hearing of the following case was continued:

Case No. 6303.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner.

Appearances:

For the petitioner, Attorney Jose Ma. Arroyo; the objector Doña Romana Gauzon, assisted by Attorney Agustin P. Seva and Mr. R. Nolan, a broker; for the objector, the Director of Public Works, represented by the Insular Government, the provincial fiscal of Occidental Negros, Gabino Sepulveda.

Attorney Seva, in behalf of the objector, offered in evidence the testimony of the following witnesses:

Testimony of the Witness R. Nolan.

After being duly sworn, witness declared as follows: 40 years of age, married, broker, resident of the municipality of Bacolod, Province of Occidental Negros, P. I.

Seva: In this opposition, the objector has presented various Exhibits, some of them relating to civil case No. 85, and some to civil case No. 249, in the Court of First Instance of Occidental Negros. Are you acquainted with these two actions in the said court?

A. Yes sir.

Q. And how do you come to know them?

A. Because I have been helping the attorneys who appeared in these two actions since the end of the year 1906 and I have frequently examined the records on file in the Court of First Instance of that province.

169 Q. What is the relation between these two actions Nos. 85 and 249?

Arroyo: I object to the question as being immaterial, incompetent and irrelevant, because these records are their own proofs, and cannot be proved by parol testimony.

Seva: This declaration is presented to the court in order to unify, and to render all these proofs of the objector homogeneous. Of course, if we could get the original records of these two cases the court would be better informed with regard to them; but as the sessions were held in a town which was not the capital of the province and in a building which was not the court building, we have no means of bringing in these proofs which would be the principal thing; and I do not think that a short account of the substance of these cases would be neither incompetent or immaterial. I could give it in my own testimony, but instead of my own testimony I prefer that of the witness.

Arroyo: I understand that the competency, materiality and everything related to the record of the cases can only be proved by the records themselves and not by the accounts of persons who say that they have examined them. More than that I do not think that a judge who has tried a case can be examined with regard to points in the record of the nature of which Mr. Nolan here testifies. I know of no legal authority to inquire into the relation that exists between one record and any others and I understand it will be a violation of the laws of procedure in force. For these reasons I object to everything in the way of proof on this point as being immaterial.

170 Court: Objection sustained.

Seva: Note my exception.

Q. You know, as shown by the Exhibits, that Mr. Pomar was appointed receiver of the hacienda which is situated in San Carlos and belongs to the objector herein?

Arroyo: I object to that also, because as a matter of fact it is in the same documents.

Seva: It is a preliminary question. (He continues to examine the witness.) Now then, do you know whether this hacienda is or is not the object of the application in the present proceedings?

Arroyo: We admit this.

Q. The accounts referred to in the exhibits presented are accounts with which it seems, have no relation with the matter under discussion, which have been objected to by counsel for the petitioner. We wish or desire to show what relation the account of the receiver, Mr. Juan de Pomar, bear to this application which the court is here to hear; can you tell us what relation exists between the application and these accounts which the court has asked Pomar to furnish?

Arroyo: I object because parol evidence is neither relevant nor pertinent to prove such matters. By this method and by this procedure we could prove a great many questions of law by means of witnesses.

Court: Objection sustained.

Seva: Note my exception. We will ask the court then to reserve to us the right to present the records of the two civil cases
171 Nos. 85 and 249 which cannot be sent to Manila because they are still pending and the said records are in the custody of the clerk of the Court of First Instance of this province.

Court: The right is reserved.

Testimony of the Witness Ramon Lopez.

After being duly sworn, witness testifies as follows: 50 years of age, married, agriculturist, resident of the municipality of San Carlos, Province of Occidental Negros, P. I.

Seva: How long have you lived in San Carlos?

A. Since 1887 or 1888.

Q. What was your business when you arrived?

A. When I arrived I went into agriculture on the hacienda that now belongs to Doña Romana and which formerly belonged to her husband Leon de Vega, and at the death of the latter I worked for myself on the hacienda of Sibungcogon.

Q. What kind of work did you perform on that hacienda?

A. I was a tenant on shares and besides in certain things I helped the owner.

Q. When you say that you helped the owner; do you refer to Sr. Vega?

A. Yes sir.

Q. And when you helped him do you mean to say that you sometimes kept a record of the operations of the estate?

A. Something of the sort.

Q. Did you never take notes of anything during the time that you lived on the hacienda?

172 A. Nothing that I remember.

Q. You know your own handwriting, do you not?

A. Yes sir.

Q. Tell me Mr. Lopez, I here show you a little book which is entitled "Account of the corn delivered by the agsadores (tenants on shares) which correspond to the two haciendas San Jose and San Antonio, commencing in August 1894"; tell me if in the 2 or 3 pages of this little book you are able to recognize your own handwriting?

A. Yes sir, it was many years ago.

Q. Well, do you mean to say that they (the pages) are in your own handwriting?

A. Yes, sir; when I was administrator six months after Sr. Vega died and his wife became a widow.

Q. I am going to call your attention to an entry which appears herein of the date of September 28, 1894; will you kindly read what it says there?

A. 28, Bigoy Mahinay; that was so long ago that I do not remember those people, but there was a man named Bigoy Mahinay who gave corn to the hacienda.

Q. Might Bigoy Mahinay be Gregorio Mahinay?

A. Yes sir.

Q. Here it says "24 baskets at 130 puso; what is meant by 24 baskets at 130 puso (ears of corn)?

A. Because it was necessary to count the corn which he had on the hill against the part which corresponded to the hacienda;

173 he was a tenant of the hacienda and worked on land belonging to the hacienda and gave his part of the corn to the hacienda.

Q. Was this entry of the 28th of September, 1894, which you have just seen and read, written on the 28th of September, 1894, the date on which you wrote it?

A. Yes sir.

Q. Do you remember in what part of the hacienda San Jose or Subungcogon this Bigoy Mahinay or Gregorio Mahinay had his corn, part of which he gave as tenant on shares, or agsa, to the hacienda?

A. If I remember correctly, it extended from the river Andoon and skirted the mountain up to the toriles (bull pens) which were called the pastures. I do not remember the sitio, but it is on the main part of the hacienda.

Q. Within the limits of the hacienda?

A. Ah! Yes sir.

Q. Do you know how far this hacienda extended?

A. According to what the husband of Doña Romana Gauzon said, there are trees which cross a river and another which is preserved by the people. From this cross from a river where there is a tree with a cross, taking advantage of the level ground, there is also on the other side of the river, trees with crosses, if they have not been cut down; and this is the boundary which the deceased showed me. Now, as to the middle of the hacienda, I do not know if it is that amount, more or less, but at the end, from stream to stream, it is.

174 Q. Tell us whether you know if these spouses worked or cultivated, directly or by means of their tenants, the sides or slopes of the mountain.

A. Partly, not much. This part here by the river Andoon was used for corn and there was a caiñgin (clearing) below and the other part was still. * * *

Q. (Interrupting him.) When did you leave the hacienda?

A. I left it in 1894 or 1895, if I remember correctly; one year before the death of Don Leon, I mean to say, 6 months after the death of Don Leon.

Q. Well, you remember Bigoy Mahinay as one of the tenants; do you remember if there was a man named Leon or Leonardo Mapa?

A. I knew him, but I do not know if he grew corn.

Q. Do you know what he did at the time you knew him?

A. At first he was a herder, that is, when I arrived at the hacienda, and after that he left.

Q. Herder for the hacienda San Jose?

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A. At first, when I arrived; afterwards he went over farther toward the mountains.

Q. Do you know if this Leon or Leonardo Mapa was ever a land holder? that is to say, did ever he have any lands which adjoined the hacienda San Jose?

A. I knew him for a long time but now, in Leon's time, I do not remember, but later yes; I saw him grow corn, yes sir.

Q. It will be about 5 years that you have known him?

A. Yes sir, longer.

175 Q. About how much more?

A. At the time of the revolution when he worked on the side of the mountain.

Q. Do you know how much land he had under cultivation?

A. It would be difficult for me to say because I did not go so near, I only know that he worked a parcel of land and afterwards I ceased to go in that direction; it is difficult for me to tell you.

Q. Did you know one Francisco Solidario who, I believe, was called Cabezang Incoy?

A. Yes sir.

Q. Where did you know him?

A. First, when I arrived at the hacienda San Jose, he was foreman and sugar boiler for Don Leon; afterwards he was a tenant on shares.

Q. Growing corn?

A. At first he grew cane and afterwards he went higher up to plant corn and became a tenant on shares; he also planted corn 10 or 12 years ago over by the mountain and I think he still plants a little; he has a parcel of land.

Q. And Eduardo Bugton, did you know him?

A. Yes sir.

Q. Where?

A. Here, in San Carlos, in the barrio of Guadalupe. He was a barrio lieutenant and afterwards he went in for planting over by the hacienda San Jose and has some lands there.

176 Seva: Nothing more.

Sepulveda (fiscal): Since you know the hacienda San Jose, do you know the extent of this hacienda?

A. Sir, I, more or less, they say about 500 to 600 hectares. I have not measured it; all I can do is to point out the old boundaries, from one river to the other. Now that at the back, that which is given on the plan, I do not know because I have not measured it according to the plan; only by these trees which have a cross; I have heard that these were the boundaries.

Q. Is there any public road on the hacienda?

A. Yes sir; the high road that leads to Valle Hermosa; but in my opinion I believe there is no public road.

Q. Are there any rivers on the hacienda?

A. River, no sir; only between 2 rivers there are creeks which arise in between; but inside there is no river, nothing but an estuary which are monuments which may be indicated.

Q. Are there any forest trees on the land?

A. Nothing more than a little island similar to the island which rises out of the sea, but in a place called the pastures there is a spot preserved by the hacienda because it was on the old plan; they preserve it and call it Guindalian, a little mountain measuring three hectares.

Q. But is this little wood on the hacienda?

A. Yes sir; there is a lot of level ground between the mountains on the public land because the higher parts are all owned and have been for a number of years, for more than 10 years; it is all under cultivation. No forest borders the hacienda except this little mountain.

177 Sepulveda: Nothing more.

Seva: You spoke of the old plan; do you know where this plan is? plan is?

A. I cannot tell you; no one ever showed it to me.

Seva: That is all.

Testimony of Juan Gutierrez.

After being duly sworn witness testified as follows: 40 years of age, married, laborer, resident of the barrio of Palampas, municipality of San Carlos, Province of Occidental Negros, P. I.

Seva: Did you know Leon Mapa or Leonardo Mapa?

A. Yes sir, I knew him.

Q. Where did you know him?

A. I knew him over there on the hacienda San Jose, formerly the property of Leon Vega.

Q. Who was Leon Vega's wife?

A. Doña Romana Gauzon.

Q. What did Leon Mapa do on the hacienda San Jose?

A. He was chief of the herdsmen and he also worked on a little clearing which he made on the land.

Q. Do you know whether the products from the clearing belonged exclusively to him?

A. He told me that he was a tenant on shares of Doña Romana.

Q. On what occasion did he tell you that he was a tenant of Doña Romana?

178 A. About the year 1899 I was chief of police and at one time I arrested them and took them to the hacienda of Doña Romana. Doña Romana had me release them and showed me the cedulas of the men that I had arrested, such as Macario Harapharap, that is Leon Mapa, Gregorio Mahinay and a son of the latter whose name I do not remember and who was living at another house, but also there on the same land at the side of their bull pen.

Q. Their bull pen?

A. Doña Romana's.

Q. Was the clearing made by this individual on Doña Romana's land also, near the pen, or outside of the land of Doña Romana?

Arroyo: I object; that is a suggestive question.

A. Above the pen; toward the slope of the mountain.
Q. What was the area of the land cultivated by Leon Mapa?
A. About 3 gantas of corn seed.
Q. Was it not 50 hectares?
A. If he were the only one working on it he would be unable to take care of that much.
Q. How did this man work? Did he have animals of his own or did he not?
A. He did not own any animals whatever; he was simply the foreman of the herders.
Q. All that with respect to Leon Mapa. Did you know Gregorio Mahinay?
A. Yes; I also caught him.
179 Q. What then? Did he have his cedula?
A. He did not have any cedula; he told me that his cedula was in the possession of Doña Romana.
Q. And why should the cedula of this person be in possession of Doña Romana, did he tell you?
A. Because he was a tenant on shares and a herdsman besides.
Q. And this Francisco Solidario; did you know him?
A. Yes sir.
Q. Where?
A. On the hacienda San Jose.
Q. And what did he do there?
A. He was also a tenant on shares.
Q. Do you know who Magdalena Masaba was?
A. She was the wife of Gregorio Mahinay.
Q. Did you know Eduardo Bugton?
A. Yes sir.
Q. Where did you know him?
A. I first knew him in the barrio of Guadalupe; afterwards here in the pueblo.
Q. What was his business?
A. He was a wine seller or merchant.
Q. Do you know if he ever practiced agriculture?
A. I know that he did so in Sipaway.
Q. Did he ever practice agriculture here in San Carlos?
A. I never saw him here.
Q. How long have you lived here in San Carlos?
180 A. So many years that I have forgotten; I was still a child when I came here.

Seva: That is all.

Arroyo: In what year were you chief of police?
A. 1898 to 1899.
Q. How many persons did you take up for not having their cedulas?
A. In the vicinity of the hacienda San Jose, four.
Q. Did you take up any one from the hacienda itself?

A. I did not make any search on the hacienda, but outside of it, for the people who made clearings, because we suspect that they had received false cedulas from the Babaylanes.

Q. Did you arrest any in other places?

A. Yes, sir; in other places also.

Q. What places?

A. In Palampas we made a search and took up those persons who had no cedulas; we did the same thing in Guadalupe and Mambaboy.

Q. Who were the persons that you took up in Guadalupe?

A. Ciriaco Garcia.

Q. And in Mambaboy?

A. Juan España.

Q. When did you first know Leonardo Mapa?

A. In 1899.

Q. Did you never arrest him after that?

A. I never went back there.

181 Q. What do you mean when you never went back there? That you did not return to the lands where Leonardo Mapa and his companions were working?

A. No, and we left him there on the hacienda at the house of Doña Romana.

Q. You never returned again to search for those individuals with the exception of that one time and you did not go to the place where they were?

A. We did not go again.

Q. And you never saw them again?

A. Yes, I saw them again, but I was no longer on the police force.

Q. When did you cease to belong to the police?

A. In 1899.

Q. At the time of the revolution, or not?

A. During the time of the revolution. I saw them again in 1900.

Q. Where?

A. At their place.

Q. How many times did you go on the hacienda of Doña Romana?

A. Lots of times, because we patrolled as far as Mambaboy.

Q. And you entered the hacienda for the purpose of searching for people?

A. When we went on the hacienda it was only to pass over it.

Q. How many times have you had dealings with Leonardo Mapa? Was the time that you arrested him the only occasion?

182 A. Probably two times.

Q. And what did you talk about on those two occasions, do you remember?

A. I asked him about his work and if he knew of any malefactors.

Q. Did you speak of nothing else?

A. No.

Q. Did you never live on the hacienda San Jose?

A. No sir.
Q. You only went on it when going to other places?
A. Yes sir.
Q. Do you know the boundaries of this hacienda?
A. I do not.

Arroyo: Nothing more.

Seva: Do you know Don Juan Pomar?
A. Yes sir.
Q. Where did you know him?
A. Here in the pueblo of San Carlos since the year 1895.
Q. What was Mr. Pomar's business when you knew him and what is his business at the present time?

Arroyo: I object because it is immaterial and irrelevant.

A. Agent for the Tabacalera.

Seva: That is all.

Testimony of the Witness Filomena Tabares.

After being duly sworn, witness testifies as follows: 45 years of age; married; resident of the municipality of San Carlos, Province of Occidental Negros, P. I.

183 Seva: Are you well acquainted with this locality?
A. Yes sir.
Q. How long have you lived here?
A. 35 years.
Q. Did you ever acquire any lands or property in this locality?
A. Yes sir.
Q. Did you make any arrangements to acquire any property in this district of San Carlos during the last five years?
A. Yes sir.
Q. And did you acquire any land?
A. Yes sir; various properties.
Q. And can you tell me what is the average price of land in this region per hectare, better than the average price of lands, the mimimum price of lands during the last 5 years?

Arroyo: I object; it is immaterial and irrelevant.
Seva: I am going to show the court that it is perfectly legal for us to show the value per hectare of the land in San Carlos and also to show whether Mr. Modragon had any right or not to sell to the Compañia General de Tabacos de Filipinas large tracts of land at absurd prices.
Court: Objection overruled.
Arroyo: Note my exception.

A. Three years ago I bought some land at about P60.00 per hectare; last year we paid more than a hundred pesos per hectare, last

year in January; but the lowest price here for the last two years was from fifty to sixty pesos per hectare.

184 Seva: That is all.

Arroyo: Were these lands used for rice, or for corn, or for sugar cane?

A. For rice, corn, cane and tobacco.

Q. The P60 per hectare was for corn or sugar land?

A. Corn and sugar, not rice.

Q. And the higher lands, for example, those near the mountains?

A. Those I mentioned as being P60 per hectare are high lands.

Arroyo: Nothing more.

Testimony of the Witness Rafael Siason.

After being duly sworn, witness testifies as follows: 87 years of age, married, without occupation on account of his advanced age, residing in the sitio of Andoon, within the municipality of San Carlos, Occidental Negros, P. I.

Seva: Do you remember Leon Mapa or Leonardo Wapa?

A. Yes sir; I remember him.

Q. Where did you know him?

A. There in Subungcogon.

Q. What was his business in Subungcogon.

A. He was one of the workmen or "taos" of Mr. Vega. He was one of Mr. Vega's day laborers.

Q. Do you know if at any time this Mapa planted any land?

A. He did not plant exactly, but he was a herdsman, and Mr. Vega said to him: "You have no means of making a living,

185 so go on the land near the mountain and clear some of it. When you are there I will furnish you some money for your support and furthermore, I will charge you nothing for the first year. You can commence to pay your share from the second year.

Q. Do you know if Mapa accepted this offer and made the clearing that Mr. Vega invited him to make?

A. Yes sir; he made the clearing, but on lands of the deceased and with his money and they gave him a share.

Arroyo: I object to that part of the statement which refers to the ownership of the deceased. Whether it is land of the deceased or not is a conclusion of the witness and he is not able to tell.

Court: The objection will be taken under consideration, but the question has already been answered.

Q. Did you know one Bigoy Wahinay?

A. Yes, I knew all those persons; he was one of the men who made clearings under Mr. Vega's direction. All of them were day laborers.

Q. Do you know if Bigoy made his clearing on the same conditions as Mapa, or did he make other arrangements?

A. Yes, sir; the conditions were the same, I know perfectly well because there was nobody there before myself and the hacienda came from me.

Seva: That is all.

Arroyo: Did the hacienda belong to you?

A. The hacienda came from me because it was mine; I gave it to Romana because she is my daughter.

186 Q. Did not the hacienda belong to the state?

Seva: We are arguing with the witness on the subject of the hacienda and I object to the question as being irrelevant. All lands originally belonged to the state.

Q. (Mr. Arroyo continues:) But you never heard the deceased Leon Vega arrange with Leon Mapa with regard to clearing the land toward the mountains?

A. I was there; we lived in the same house.

Q. But what I was asking you is whether you merely heard this from Leon Vega or whether he told you the conditions under which Mapa and the other workmen cleared the land over by the mountains?

A. Not only did he tell me, but I was present when he sent these men off, because I was the man in charge of the hacienda.

Q. How old were you then?

A. These people made their clearing in the year 1888 or 1884.

Q. Do you know the area of the hacienda?

A. It is only necessary to see the two rivers; the Diver Gigalaman on the south and the River Andoon on the north.

Q. But toward the west?

A. Mountains.

Q. You do not know the total number of hectares contained in the hacienda San Jose?

A. I could not say exactly because the land is very wide. There is land enough there for two haciendas if needed.

Q. But do you not know if Doña Romana sought composition with the state for this hacienda?

187 Seva: I object for the reason that it is improper cross-examination of this witness.

Court: Objection sustained.

Q. Do you know definitely all the antecedents of the hacienda San Jose?

A. I know many of them. I was the first one to plant sugar cane there that I had bought from the workmen in the neighborhood.

Arroyo: Nothing more.

Court: For how many years have you been acquainted with the hacienda San Jose?

A. Quite a long time.

Q. How many years, more or less?

A. I calculate that it will be more than 40 or 50 years.

Q. Who was the owner of the hacienda when first you knew it?

A. Mr. Vega.

Q. Do you not know to whom the hacienda San Jose belonged before Mr. Vega?

A. At first it was not a hacienda, but a barrio, and then afterwards it was broken up. This barrio was formerly called Zaragoza, but later it was broken up.

Q. Do you know how this barrio, this land, came to belong to Mr. Vega?

A. After the cabezas de barangay (heads of the wards) failed to pay up and absented themselves from these parts one Captain Manones sold it to me and I afterwards gave it to Mr. Vega.

Q. For how much did the said Captain Manones sell it to you?

A. I did not give him any money, but I had to pay P381 for him which he owed as a balance in his cabezeria.

188 Q. Did you pay this amount to the state?

A. Yes sir, it was I who paid it.

Q. And how much land did Mr. Manones transfer to you?

A. He transferred half of it to me and the other half to his children; the part which went to his children was acquired by one Baguio, from whom the deceased bought it.

Q. What year was that?

A. It was in 1869; it was at a time when we had a brave comandante whom you would not have known, one who shot the people around there and caused the barrio to be abandoned, for which reason it became depopulated. At that time it was included in Guinjulgan.

Court: Nothing more.

Testimony of the Witness Doña Romana Gauzon.

After being duly sworn, the witness testified as follows: 50 years of age; widow, living at No. 20 Calle Aguilar, municipality and province of Iloilo, P. I.

Seva: Have you been sued by the Compañia General de Tabacos de Filipinas?

A. Yes.

Q. And has your property been put in the hands of a receiver, Mr. Juan de Pomar?

A. Yes sir.

Q. Of whom are you the widow?

A. Of Leon Vega.

189 Q. Has anything belonging to you been attached by the Compañia General de Tabacos de Filipinas in any of the proceedings brought by the said Compañia General de Tabacos de Filipinas against you?

A. The hacienda.

Q. And what else?

A. The furniture, carabaos.

Q. Well, we have proofs that your right of repurchase has been attached. Is that true?

A. Yes sir.

Q. Are you or are you not inclined to make use of this right of repurchase?

A. I wish to make use of it; so much so that I have asked my attorney to have the attachment released, to pay up, and to have an accounting to see whether I owe anything or not.

Q. Why do you not use this right of redemption now at once?

A. Because they say that the attachment has not been released; because the Compañia General objects.

Q. Madam, are you acquainted with this Don Juan de Pomar?

A. Yes sir.

Q. For what reason do you know him?

A. Because he is the agent of the Tabacalera and I have done business with him as such agent.

Q. And where is he, the agent of the Tabacalera?

A. Here in San Carlos.

Q. Approximately how long do you know him?

A. Six years, more or less.

190 Q. Very good. Do you know this little book which for its identification we will mark Exhibit 22? (He shows it to the witness.)

A. Yes sir, I know it.

Seva: I offer in evidence this little book as part of the testimony of the witness Ramon Lopez.

Court: It is admitted as Exhibit No. 22.

Q. This entry here, which appears under the date of September 28, 1894; do you recognize the writing?

A. Yes sir.

Q. Whose writing is it?

A. It was written by Don Ramon Lopez, when for some months he was managing my hacienda. And this entry here was made by an employee named Jugley, that I had. The writing on the cover was made by the latter.

Q. Do you know what Bigoy Mahinay is referred to in this entry of September 28?

A. Yes sir; this Gregorio Mahinay was one of my workmen.

Q. What did this workman do for you?

A. He cleared land and planted corn at places we pointed out.

Q. And during the time he worked on the hacienda did he derive any share or benefit?

A. He received a half of the produce. Sometimes he worked as a day laborer.

Q. Do you know this book (showing it to the witness) entitled "diary for the years 1890 and 1891"?

191 A. Yes sir; that is my writing.

Q. When did you write these entries for the years 1890

and 1891 referred to in these four or five pages, not to go farther into the book?

A. On the same dates that are indicated there, on the same days as those dates.

Q. So that this name, Gregorio Mahinay, which appears among the last at the back of folio 4 of this book, was written by you at that time?

A. Yes sir; these were the working days. In the evenings we called in the men, wrote their names, and the names answer for the days that each man worked.

Q. Is this Gregorio Mahinay in any way related to the Gregorio Bigoy Mahinay which appears in Exhibit No. 22?

A. The same.

Q. On the following page, or on folio 5, the last name but one on the list is again Gregorio Wahinay. The entry apparently refers to the 5th of May and successive dates until July 7th. If this Gregorio Mahinay the same party?

A. Yes sir.

Q. And what does this note here mean?

A. The days worked by Gregorio Mahinay.

Q. And 2 pages farther on the last name but one which appears is also that of Gregorio Mahinay. Will you tell me if this Gregorio Mahinay is the same one?

A. Yes sir; it is the same one because here the page ends and I have transferred the name. There you can see the date.

192 Seva: I offer this day book as a part, for the present, of the testimony of this witness, as Exhibit No. 23.

Arroyo: I object to the presentation of this document as immaterial.

Court: It is admitted as Exhibit No. 23 of the objector.

Arroyo and Sepulveda: Exception.

(Mr. Seva continues:)

Q. Very good; here is another book entitled "Rations furnished the laborers, etc." It apparently refers to the years 1895-6, and on turning to folio 5 at the end I see, under date of October 25, 1895, the name of Gregoria Mahinay. Is this same gentleman the Gregorio Mahinay formerly referred to?

A. Yes sir; and the writing is that of one of my men, Judley.

Q. It says here, in front of the name Gregorio Mahinay there is the number 58; will you tell us what this 58 means?

A. Here it says "baskets" and these baskets are the part which belong to the hacienda. It is the duty of the manager of the hacienda to divide the crops of the hacienda with the men and if 58 corresponds to the tenant the same amount will correspond to the hacienda.

Q. So that it means to say that Gregorio Mahinay turned over 58 baskets?

A. Yes sir, 58 baskets of corn.

Seva: I offer in evidence this document as part of the testimony of this witness in what refers to Gregorio Mahinay.

193 Arroyo and Sepulveda: We object to the presentation of this document as immaterial.

Court: It is admitted as Exhibit No. 24 of the objector.

Arroyo and Sepulveda: Note our exception.

(Mr. Seva continues:)

Q. Now I am going to ask you about a little old book here entitled "Book No. 2, ledger account of the tenants of Subungcogon from 1882 until 1891 and of the year 1893." Turning to the back of page 4 and the following pages of the book, please tell me what name this is at the commencement of the page?

A. Leonardo Mapa.

Q. Did you know this Leonardo Mapa?

A. Yes sir.

Q. Did you know Leon Mapa?

A. Yes sir, he is the same person as Leonardo.

Q. Page 5 also commences with Leonardo Mapa?

A. Yes sir.

Q. How does the back of page 5 commence?

A. Leon Mapa.

Q. Folio 6?

A. Leonardo Mapa.

Q. The back of page 6?

A. Leon Mapa.

Q. Page 7?

A. Leon Mapa.

Q. Very good; why does the name Leon Mapa appear in the pages of this little book? What did Leon Mapa have to do with the hacienda?

194 A. Leon Mapa was a workman on the hacienda. At first he was a tenant raising sugar cane but as he did not work very well he only remained as such for a short while. My husband turned him out and made him a herdsman. As herdsman he worked a little at clearing, but very little, because my husband reproved him because he neglected the cattle.

Q. About how much land did Leon Mapa cultivate as a clearing by order of your husband?

A. It was a very small amount and in various places?

Q. About how much was this small amount? About 50 hectares?

A. A ganta of seed, at most.

Q. Whereabouts?

A. On the mountain. They picked out every year the best place where the trees were high and planted there.

Q. Tell us if this Leon Mapa, as such tenant, gave any share of his produce to the estate?

A. Yes sir, as appears in the notes.

Seva: I also present this book as part of the testimony of the witness.

Arroyo and Sepulveda: With our objection and exception.
Court: Admitted as Exhibit No. 25.

Q. Now my questions will deal with a book which is entitled "The attorney in fact in Guinatilan is Pedro, first Lieutenant, notes of the years 1885-6"; on page 7, commencing with the last of this book, there is an entry in Visayan which says "Lista sang binhí."

A. Yes sir; list of the seed.

195 Q. What name is it that appears in this list?

A. Gregorio Mahinay.

Q. Of what year?

A. 1886.

Q. Month?

A. June.

Q. Whose name appears four names lower down?

A. Leon Mapa.

Q. And what do the names of Gregorio Mahinay and Leon Mapa mean in this book that is so very old?

A. It is an entry of the names of the persons who took seed.

Q. What does it mean, that a person takes seed from the hacienda?

A. The tenant takes seed from the hacienda; they have their lands prepared and when it rains and they wish to plant they ask for seed.

Seva: I will also offer in evidence this document or book, which I ask to be marked as an Exhibit.

Arroyo and Sepulveda: With the same objection.

Court: It is admitted as Exhibit No. 26.

Arroyo and Sepulveda: With our exception.

Q. Do you remember one Francisco Solidario?

A. Yes sir; he was the first mason that built the furnace on the hacienda San Jose.

Q. I am going to show you page 121 of a black, board-bound book, No. 5, entitled "Book of various contracts of the year

196 1888 and of the current year 1892." Please tell me the name at the top of page 121.

A. Francisco Solidario.

Q. What is the first entry on that page?

A. (The witness reads.) "1887, Monday, March 21. On this date entered as foreman, at P6 per month, with a cavan of corn, from this date until August."

Q. Are the entries at the back of page 122, page 123 and successively up to the back of page 126 also the accounts of Francisco Solidario?

A. Yes sir.

Q. At the back of page 118 I find personal cedulas or provincial taxes in favor of Francisco Solidario; there are several cedulas of Francisco Solidario; why are the cedulas of this man in your possession?

A. Because they were paid by me or by the hacienda, and as he owed money to the hacienda, the hacienda took up his cedula.

Q. In what concept did he owe?

A. In the capacity of laborer and these cedulas paid for by the hacienda.

Q. So that this Francisco Solidario was one of the individuals who worked on your hacienda on those dates?

A. Yes sir.

Seva: I also offer in evidence pages 118 et seq. of this book, as part of the testimony of this witness.

Arroyo and Sepulveda: The same objection and exception.

197 Court: Admitted as Exhibi. No. 27.

Q. Whose land did these persons work that you have referred to up to the present in your testimony; who possessed the land that they worked?

A. It was mine; I possessed it, in his lifetime it belonged to my husband; afterwards it belonged to me and my son.

Q. And the capital or the money which was used by the tenants in their work?

A. It belonged to the hacienda and was advanced by me.

Q. During the hearing of these proceedings you have heard that these individuals now claim to have transmitted to Sr. Mondragon, and the latter to the petitioner, certain parcels of land which are related to the property applied for? Since when have you heard, if you have heard at any time, that these gentlemen here mentioned own any real estate or lands?

A. I have never heard of it.

Q. Up to what time did they acknowledge themselves to be your tenants?

A. While I was on the estate; up to the time that I left when it was attached by the Tabacalera; afterwards I do not know.

Q. That would be in what year?

A. In 1906.

Q. Tell us, did you have many tenants of that sort on the mountainous part of the estate?

A. Many went away, others remained, and other- left; many of them.

198 Q. Good; you remember a man named Severo Uyog?

A. Yes sir.

Q. Did you have anything to do with this individual?

A. He worked on a property that was being worked by a Chinaman that was a godchild of my husband; this property was ours and the Chinaman was working it and Severo Uyog was one of his laborers or brothers-in-law. But that part of the property we ceded to my husband's godson only.

Q. In what manner did you cede the land?

A. Well, they took their share, but the land is ours.

Q. You remember the boundaries of the property?

A. Yes sir.

Q. With whom did you adjoin on the north?

A. With the River Andoon and Government mountain lands.

Q. Tell us, is it not true that Mr. Mondragon adjoined you on the north?

A. No sir.

Q. Does Mr. Mondragon own any parcel of land on the north?

A. A piece of land of about 5 or 10 hectares, something like that; that was when I left the hacienda.

Q. And how did he acquire this land? Where did it come from?

A. He said that he worked it, and as at that time I was having questions with the Tabacalera, I left him, and I do not know if he took off any crops or not.

Q. What are the boundaries on the west of the hacienda?

A. State mountain lands and the River Gigalaman.

199 Q. And do you adjoin the lands of any other person on the side of this Government mountain land?

A. No.

Q. Since when have you held possession of these mountains?

A. Since 1884.

Q. From that time until the present, or until you left in the year 1905 or 1906, did you always have possession of that part?

A. Always.

Q. What kind of possession did you hold?

A. Good possession, without interruption from anyone.

Q. Did anyone at any time file any claim against you, or Mr. Vega, during the time that you held possession of that part of the mountain?

A. None.

Q. What did you use this mountain for?

A. For planting corn and tobacco.

Q. Through your tenants or b yyourself, directly?

A. By means of tenants.

Q. Could you give us the names of some of those tenants?

A. One of them is Bigoy, Macario Patatag and Leon Mapa; but very little land. Benigno Comindo, Isidoro Soria, Martin Maspala, and a man by the name of Gregorio whose surname I forget.

Q. But were there or were there not any more?

A. A lot of people worked on the mountain; that is to say, I had a great many workmen; their names are in the books.

Q. And can you tell me whether or not if all the persons who worked there gave you a share?

200 A. All of them gave corn, tobacco, bananas, sweet potatoes and everything.

Seva: That is all.

Sepulveda (Fiscal): Do you know the area of the land of which you allege yourself to have been the owner?

A. The whole land on the hacienda toward the mountain? More than 600 hectares.

Q. Since when did you know that the area was 600 hectares?

A. Because the hacienda was surveyed and we consider the part toward the mountain to be more than 140 hectares.

Q. Quite so; since when did you know of this measurement, this superficial area?

A. Since the year 1894 or 1893.

Q. After you had obtained the real title from the late government?

A. Afterwards.

Q. So you know what area is set out in your title?

A. Yes sir.

Q. Why did you not ask for the excess over that contained in your title since you say that you now have this land?

A. I wished to apply for it, but things so happened that I could not.

Q. And what do you use this excess area for?

A. For growing corn.

Q. The whole of it?

A. All of it. Some years we do not cultivate the whole of it that same year; part of it was left and the other part was culti-
201 vated and if this part for example was cultivated now, the other part was cultivated the following year—according to the people who worked it.

Q. You have said that you made clearings there; what clearings were made there, was it of trees or shrubs?

A. Shrubs and a few trees. During the first years of my husband there were trees; afterwards shrubs.

Q. Are there no trees on your hacienda at the present time?

A. As it is four years ago, perhaps no; when I left, there were no trees, only shrubs.

Sepulveda: That is all.

Seva: When you were granted the real title was the property measured or not?

A. It was measured.

Q. Who measured it?

A. Don Eduardo Fuentes.

Q. And how did he measure it, do you know?

A. By the eye apparently. They were more than half a day measuring it.

Q. Was a plan made from that measurement or survey?

A. Yes a plan was made but it was afterwards sent to me.

Q. Where is that plan now?

A. The Tabacalera has it.

Q. When did you give it to the Tabacalera?

A. When I mortgaged the property.

Q. Have you any copy of this plan?

A. I have a sketch.

202 Q. How was this sketch made? Was it made side by side with the other, or traced, or how?

A. I spread out the plan, placed a piece of paper above it, and copied the lines.

Q. So that it was traced?
A. Yes sir.
Q. You remember the surveyor named Hernandez or Fernandez?
A. Yes sir.
Q. Did you have this property measured again?
A. I remember that I had the hacienda measured at another time.
Q. About when was that?
A. In 1905 or 1906.
Q. When you made this survey what was the approximate result of Hernandez' survey?
A. It turned out to be 600 hectares, the hacienda and mountain lands together.

Seva: That is all.

Arroyo: Leon, Solidario and all those persons worked on the side toward the mountain, did they not?
A. Yes sir.
Q. And you have never seen those lands which they worked, have you?
A. Sometimes I went over by the mountain and they were pointed out to me.
Q. But did you see the land?
203 A. They did not all work in the same place. Leon worked on the south.
Q. But you saw the places worked by them?
A. I did not go to the place itself.
Q. Then you do not know the superficial area of the lands they worked.
A. I can only calculate by the amount of seed they asked for.
Q. And by what they told you some time or another?
A. Yes sir.

Seva: I should like to have the court go upon the land at the place where the trees are that have been indicated by the witness Lopez, those which indicate the boundaries of the hacienda. I think it would assist the court in deciding the case. We could see how far the cultivated part extends, that part over which Leon Vega exercised acts of ownership, as did the objector even during the lifetime of her husband who died in 1894 or 1895. We have in this witness one who testified without contradiction that there are trees marked with crosses from the date that he entered on the land as a tenant and which were pointed out to him by the late Mr. Vega as marking the boundaries of the property.

Arroyo: I object to the proposition of making an ocular inspection as immaterial, inasmuch as the objector has not yet proven the ownership of the property.

Sepulveda: I am of the same opinion, and would state furthermore that neither the objector nor Mr. Andres Mondragon have
204 proved the difference of area noted in the property; neither has the said difference been identified.

Court: I must refuse to make the ocular inspection because it is

unnecessary, for the reason adduced by the attorney for the petitioner and the fiscal, and because of the expense which would be occasioned to the Government by such proceedings in transferring the court to the place where the inspection would be held.

Seva: The objector offers to pay the expenses you would be occasioned by transferring the court to the scene of the ocular inspection. I also ask that we be reserved the right to present, as soon as we arrive at Bacolod, the original, or in default thereof, certified copies of the orders issued in the two civil cases Nos. 85 and 249, brought in the Court of First Instance of Occidental Negros, as well as the written objection or opposition to Mr. Andres Mondragon which, on account of lack of time, we were unable to finish and of which I had a rough draft at the commencement of this afternoon's session.

Court: The written opposition to Mr. Mondragon may be sent to Manila, and the original orders of the two civil cases mentioned may be presented to the court when it goes to Bacalod in February next. The court allows the parties until the 1st of February to send their respective written arguments to Manila and for the rebuttal of these arguments you are allowed until the 18th of February in Bacolod, by which date the court will be there to hold session.

Seva: I ask that my exception appear to the ruling of the court denying the ocular inspection which we have asked for.

205 Court: Let the exception be noted.

On account of the lateness of the hour the court adjourned the session, the hearing still being open for the further proceedings mentioned in this record.

(Here follows stenographer's certificate.)

206 Heading and Title Omitted.

Case No. 6303.

Now comes the objector, Romana Gauzon, widow of Vega, and to the honorable court sets forth:

1. That she opposes the claim of the petitioner that of the old area of more than 600 hectares contained in the hacienda San Jose they derive from the objector only the 465 hectares which appear in the real title of the objector, and that the rest was obtained by purchase from Andres Mondragon.

2. That said Andres Mondragon never owned any parcel of land adjoining the hacienda San Jose on the north, with the exception of a small parcel of about 10 hectares from the year- 1905 or 1906 which the objector recognizes as his in order to avoid litigation.

3. That the pretended predecessors in interest of Andres Mondragon were all tenants on shares and employees of the objector, and were recognized as tenants as long as she was not in litigation with the petitioner company, and that the said persons turned over to the owners of the Hacienda San Jose the share which they owned as tenants.

4. That the instrument executed by Andres Mondragon in favor of the petitioner and which is attached to the record as Exhibit C, is null and void.

5. That the objector exercised, up to the date of the sale of the property, rights of ownership, not alone over the 465 hectares
207 which are set forth in her royal title, but also over the apparent excess of 137 hectares which the petitioner claims to have derived from Don Andres Mondragon; these rights of ownership were exercised by the objector because she has possessed the said 137 hectares since 1881 and has cultivated them since 1884 without interruption, publicly and quietly as owner thereof; and therefore the said objector continues to have the right to repurchase the 465 hectares contained in the royal title, as well as the excess 137 hectares, and over the whole of the 602 hectares of the property.

For all of which she asks the court to declare that the predecessors in interest of Andres Mondragon were tenants on shares of the objector, and that neither the said Mondragon, nor the persons from whom he claims to derive his rights, have, nor ever have had, any right or interest of any sort in the whole or part of the hacienda San Jose which they may cede, transfer or sell to the petitioner; that Exhibit C of the petitioner be declared null and void and that the court declare that the objector has the right to repurchase the whole of the 602 hectares which compose the hacienda San Jose.

Bacolod, January 20, 1911.

(S'g'd) A. P. SEVA,
Attorney for the Objector.

(Various certificates follow.)

208 (Here follows the trial brief before the Court of Land Registration of the objector Romana Gauzon which was not offered in evidence and to the inclusion of any part of which counsel for the appellant objects on the ground that the same forms no part of the record and the concluding portion of which trial brief is as follows:

"We respectfully request that, without prejudice to granting the petitioner title to the 602 hectares which comprise the estate in question, on issue of said title, the objector be reserved the right to redeem, not only the 465 hectares which prima facie belongs to her under the royal title, but also the remaining 137 hectares which are included in the property and which by an extraordinary obliquity of vision the petitioner claims to derive from Andres Mondragon. We further pray that the trial court be ordered to make an ocular inspection of the northern part of the land, where signs exist that mark the boundary thereof, and which have been proven to so exist without contradiction in the record. We further pray for any other equitable relief which may be allowed the objector.

"Bacolod, January 31, 1911.

(S'g'd) "A. P. SEVA,
"*Attorney for the Objector.*"

EXHIBIT No. 28 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 249.

Recovery of a Sum of Money.

The undersigned, Clerk of the Court of First Instance of Occidental Negros,

209 Certifies, that in the record of the above-entitled case it does not appear that a writ of execution of the judgment entered in the said case was either prayed for or issued, nor that the amount called for in the said judgment has been paid.

In witness whereof, on petition of Attorney A. P. Seva, I issue these presents in Bacolod this 10th day of February, 1911.

(S'g'd) MARIANO CUADRA,
Clerk of the Court of First Instance of Occidental Negros, P. I.

210 EXHIBIT No. 29 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 249.

Recovery of a Sum of Money.

The undersigned, Clerk of the Court of First Instance of Occidental Negros,

Certifies, that in the record of civil case No. 249, in which the Compañia General de Tabacos de Filipinas is plaintiff and Romana Gauzon is defendant, it does not appear that the preliminary attachment levied on the right of repurchase of the hacienda San Jose or Subongcogon by the sheriff of Occidental Negros on March 12, 1907, has been set aside, released, or annulled.

In witness whereof, and on the petition of Attorney A. P. Seva I issue these presents in Bacolod on February 10, 1911.

(S'g'd) MARIANO CUADRA,
Clerk of the Court of First Instance of Occidental Negros.

EXHIBIT No. 30 OF THE OBJECTOR.

This is a copy of a statement of receipts for sugar sold and expenditures, rendered to the Court of First Instance of Occidental Negros in case No. 85 by Juan Pomar as receiver of the hacienda

San Jose. The statement is entitled "Account which the receiver of the property of Doña Romana Gauzon presents from the 13th of September 1906 to the 12th of March 1908" and is signed as follows:

"Saving errors or omissions. Iloilo, August 4, 1909. It is a copy. (S'g'd) Juan D. Pomar."

The items of the account being immaterial to the issues involved on this appeal are omitted for the sake of brevity.

211 EXHIBIT No. 31 OF THE OBJECTOR.

SAN CARLOS, September 10, 1906.

Mr. Joaquin Sierra, Iloilo.

DEAR FRIEND: I was in Subongcogon Friday morning and went over nearly the whole of the hacienda and I am able to inform you that all of the cane, with the exception of a field of calanan (cane for seeding purposes) on the right hand on entering the hacienda from the direction of the river, which is somewhat yellow, all the rest of the cane is so green that it is nearly black and it is very clean. I am sure that this year the hacienda will yield more thousands of sugar than last year.

I think it would be well for you to come on the first boat and stay with me at the house. The hacienda, without including the lands belonging to me, contains much more than 465 hectares and the rest belongs to you people, but for that it would be well to put monuments at the boundaries of the hacienda, turning over only the hectares which you mortgaged to the company because as land will be lacking to complete the 465 hectares you are called on for the eviction or to complete the said number of hectares; afterwards any amount over the 465 is yours.

212 I estimate that the excess over the 465 hectares will be sufficient for a hacienda of 3,000 piculs or more.

Come soon without telling anybody of your purpose and do not tell anybody that I sent you this letter. Leave the cousin in Iloilo; you will be absent for several days and I think that you will be able to gather up some things belonging to the hacienda which were not included in the attachment and which amount to quite a number.

I beg you to tear this letter up as it would not be well for anybody else to read it.

Regards to the cousin and to yourself.

(S'g'd) ANDRES.

P. S.—Don Antonio Castro died suddenly in his house from heart failure; he was unable to confess himself or anything.

213 EXHIBIT NO. 32 OF THE OBJECTOR.

On Account of the Lack of Proper Stamped Paper.

I, Don Rafael Siacon, ex-gobernadorcillo of the pueblo of Calatrava, set forth and declare that I am in full possession of my mental faculties and that I own a parcel of land in the sitio of Subongcogon, barrio of San Carlos, pueblo of Calatrava of this Province of Occidental Negros, which land is large enough to sow one hundred, more or less, cavanes of corn seed; it is bounded on the north by the River Anduan, on the east by the beach, on the west by government forest land, and on the south by the land of Don Pedro Baguio, ex-gobernadorcillo of the pueblo of Guilguingan. I declare that I have neither sold nor mortgaged the said land; that it is not encumbered in any manner, and that I have applied to His Excellency the Director of Administración Civil of these Islands for title by composition thereto. And of my own free will, from this date I cede and transfer my rights therein as such owner of the said land to Doña Romana Gauzon de Vega, whom I treat as my niece. At no time in the future shall my descendants claim this land which I now give to the said Doña Romana Gauzon de Vega; any claims they may make shall be null and valueless in law because in addition to the fact that I treat the said lady as my niece, she renders me favors which I consider of greater value than the land referred to.

Messrs. Gregorio Bocaling, Salvador Abelada and Tomaz
214 Alvarado are witnesses to the fact that I am in full possession of my mental faculties.

Arguelles, September 11, 1881.

(S'g'd) RAFAEL SIACON.

(S'g'd) GREG. BOCALING.
" SALVADOR ABELADA.
" TOMAS ALVARADO.

Mar.

215 EXHIBIT NO. 33 OF THE OBJECTOR.

Office of the Sheriff of Occidental Negros, P. I.

MACOLOD, March 13th, 1907.

To the Municipal President of San Carlos, and Deputy Sheriff.

SIR: By virtue of a writ on file in this office, issued by the Court of First Instance of Occidental Negros, by these presents you will please attach 30 sheep on the hacienda San Jose situated in Subongcogon in your jurisdiction, which sheep are the property of Doña Romana Gauzon, widow of Vega, defendant in proceedings brought against her by the Compañia General de Tabacos de Filipinas in

he present action; the former attachment levied in another action etween the same plaintiff and defendant is hereby cancelled, which rder was issued by the Court of First Instance of Iloilo because he action and the complaint were dismissed. At the same time it s suggested that you attach any other property of the said defendant hat you have knowledge of, and all the property should be placed n possession of Sr. Juan D. Pomar. The debt of the defendant mounts to eleven thousand ninety-three pesos and sixty two entavos (P11,093.62).

You are hereby allowed ten days within which to make
216 a return; this period will commence from this date.

Very respectfully,

(Sgd.) ARTURO CUADRA,
Deputy Sheriff of Occidental Negros, P. I.

(Certified to by the clerk as being a true and correct copy.)

217 EXHIBIT NO. 34 OF THE OBJECTOR.

Heading and Title Omitted.

Civil Case No. 249.

Recovery of a Sum of Money.

BACOLOD, November 23, 1907.

In view of the petition contained in the foregoing writing presented by the defendant, wherein she prays that Juan D. Pomar, the receiver of the property attached from her, be cited to appear before this court and set forth his reasons why he should not be proceeded against for contempt of court for not having presented detailed accounts of his operations in selling the sugar.

The court orders the receiver Juan D. Pomar to file in this court within a period of 15 days counted from the date on which she receives the order, a detailed account of his operations with regard to the sugar produced by the sugar cane attached from the defendant and ground by him.

So ordered.

(Sgd.) VICENTE JOCSON,
Judge of the Tenth Judicial District.

(Here follows certificate of the clerk that the foregoing is a true and correct copy.)

218 EXHIBIT NO. 35 OF THE OBJECTOR.

UNITED STATES OF AMERICA,
Philippine Islands:

I hereby declare that on this date I have attached all the sugar cane on the hacienda San Jose belonging to Doña Romana Gauzon, widow of Vega, measuring 250 hectares more or less, and stating at the same time that 21 fields belong to the following tenants on shares, to wit, Mr. Alejandro Olmo 6, Andres Mondragon 6, Valentine Fuerta 3, Alejo Alegria 4, and Francisco Villarin 2. Part of the said cane has already been ground, about 2 000 piculs more or less, according to the receiver of the same, which sugar was sent to Iloilo and consigned to the plaintiff company.

With respect to the sheep and other movable property belonging to Doña Romana Gauzon, specified in the attachment levied by this office on the 17th of January, 1907, they were sold by me by virtue of the writ of execution issued by the justice of the peace court of this pueblo on February 23, 1907.

San Carlos, March 21, 1907.

(Sgd.) AGUSTIN ILAGAN,
Deputy Sheriff.
" JUAN D. POMAR,
Receiver.

(Certified to by the clerk as being a true and correct copy.)

219 UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Case No. 6303.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner.

Minutes of the session held by the Hon. Higinio Benitez, Auxiliary Judge, in the municipality of Bacolod, Occidental Negros, on February 18, 1911, at 8 o'clock in the forenoon.

On the hearing being called, the objector Doña Romana Gauzon appeared, assisted by her attorney, Mr. A. P. Seva. No appearance by or for the petitioner. Provincial fiscal Gabino Sepulveda appeared in representation of the Director of Lands.

Counsel for the objector filed a written document in rebuttal and offered to serve a copy thereof on the attorney for the petitioner.

Counsel for the objector presented additional evidence consisting of the following:

After being duly sworn the following witnesses:

Mariano Cuadra, 41 years of age, married, clerk of the Court of First Instance in Bacolod, Occidental Negros, P. I.

Romana Guazon, 50 years of age, a widow, residing in Iloilo, P. I.

A. P. Seva, whose personal circumstances appear in the testimony previously given by him in this case.

Counsel for the objector presented five documents and asked that they be marked as Exhibits 28, 29, 30, 31, to 35. These were admitted by the court and no further evidence was presented.

The court reserved its decision until after it had examined all the record.

The session was closed at 12 noon.

(Sgd.) VICENTE INSUA,
Deputy Clerk of Court.

Certified O. K.

(Sgd.) H. BENITEZ,
Auxiliary Judge.

220 Heading and Title Omitted.

Minutes of the session held on the 18th of February, 1911, in the municipality of Bacolod, Province of Occidental Negros, Philippine Islands, presided over by the Honorable Higinio Benitez, Auxiliary Judge.

The hearing was opened at 8 o'clock a. m. by the deputy sheriff; Don Vicente Insua acted as deputy clerk and the undersigned as stenographer. Case No. 6303, Compañia General de Tabacos de Filipinas, petitioner, was called for the continuation of the hearing.

Appearances:

The objector Doña Romana Gauzon, widow of Vega, assisted by Attorney A. P. Seva, and Provincial Fiscal Gabino Sepulveda in representation of the Insular Government.

Seva: In compliance with the order of the court by which we were allowed until the present date to file an argument in rebuttal
221 to the first argument of the petitioner, and as I had hoped that the attorney for the said petitioner would appear in these proceedings, I had intended to give him a copy here; but as he is not here I will present it to the court and I offer to send a copy of it by mail to Don Jose Ma. Arroyo, the only attorney who has appeared for the petitioner in these proceedings.

Thereupon counsel for the objector Doña Romana Gauzon offered the testimony of the following witnesses.

Testimony of Witness Mariano Cuadra.

After being duly sworn, witness testified as follows: 41 years of age, married, clerk of the Court of First Instance of Occidental Negros, residing in Bacolod, Occidental Negros, P. I.

Seva: Were you clerk of the Court of First Instance of Occidental Negros during the month of January of this year?

A. Yes sir, and I continue to be so.

Q. You were also clerk in the month of December, 1910?

A. Yes sir.

Q. I here show you Exhibit 5 of this record. Tell us if it is a document issued by you.

A. Yes sir.

Q. In your capacity as clerk of the court?

A. Yes sir.

Q. Here is Exhibit No. 6. Tell us if it was issued in the
222 same way as the former.

A. Yes sir.

Q. And Exhibit 7?

A. The same.

Q. And 18?

A. Yes sir.

Q. Exhibit 18 contains an amendment which says September 22 instead of May of the year 1909. Do you remember if this amendment was made by your authority?

A. Yes sir.

Q. Is the telegram which appears at folio 134 a telegram by which you authorized this change?

A. Yes sir.

Q. Was it in answer to the telegram which appears at folio 135, or was it not?

A. Exactly.

Q. Very good. Do you recognize the document which I here show you? (Unless I am mistaken I think we have up to Exhibit 27 in this record.) I here show you a document which for its identification is marked as Exhibit 28. Tell us if you recognize this document, and say what it is.

A. This document is the certificate that was issued by me in my capacity of clerk of the Court of First Instance of Occidental Negros. It sets forth that in the record of case No. 249, Compañia Gen-
223 eral de Tabacos de Filipinas versus Romana Gauzon, it does not appear that any writ of execution of the judgment rendered in the same was ever asked for or issued nor that the amount of the said judgment has been paid.

Q. And this document which I show you, marked Exhibit 29 for its identification, who issued that?

A. That is also a certificate issued by me referring to the same case, as clerk of the Court of First Instance of Occidental Negros, referring to the same case No. 249.

Q. What does the certificate refer to?

A. That it does not appear in the record of said case that the preliminary attachment levied upon the right to repurchase the hacienda San Jose or Subongcogon on the 12th of March, 1907, was ever set aside, released, or cancelled.

Q. Before issuing the certificates which we have shown you, Exhibits 5, 6, 7, 18, 28, and 29, did you examine and read the records to which they referred?

A. According to my understanding I issued these certificates after first examining the record.

Q. It cannot be doubted that the contents of these certificates are the truth as it apears in the same record?

A. According to my knowledge and belief.

Q. At the time you issued the various certificates to which we have referred, did you have the records in your possession?

224 A. Yes sir; and they continue to be in my possession and custody.

Seva: That is all. I offer these documents as Exhibits 28 and 29.

Sepulveda: No objection.

(No cross-examination.)

Court: The documents are admitted.

Testimony of the Objector Doña Romana Gauzon.

Witness was duly sworn; her personal circumstances appear in the record.

Seva: I show you here eight different documents, which for their identification will all be marked No. 30. Do you know what document this is which is dated Iloilo, August 4, 1909, and entitled "Account presented by the receiver of the property of Doña Romana Gauzon from the 13th of September, 1906, until the 12th of March, 1908," and subscribed by Juan D. Pomar? Do you know what document this is?

A. Yes sir.

Q. What document is it?

A. It is a copy of the crop which I left on the hacienda Subongcogon.

Q. But a copy of what?

A. Of the crop which we left.

225 Q. This crop that you refer to, what is it? Crop of what?

A. Sugar cane.

Q. Why is there a certain Juan D. Pomar who renders accounts of this crop of sugar cane?

A. Because he is the receiver of the attachment of the hacienda.

Q. Of the property attached on the hacienda?

A. Yes sir.

Q. In what proceedings was this sugar cane attached, for the product of which the receiver makes an accounting in this document?

A. In the second action, in which they attached from me the right of repurchase and the sugar cane.

Q. I will now show you a letter, which for its identification I will mark with the number 31, addressed to one Joaquin Sierra, dated September 10, 1906, and signed by one Andres. Tell me if you know this letter, and if so, tell me whom it was written by?

A. By Andres Mondragon.

Q. Do you recognize the signature on this document?

A. Yes sir; it is that of Andres Mondragon.

Q. How do you know it is the signature of Andres Mondragon?
A. Because I have received a number of letters from him.
Q. Have you sometimes seen Andres Mondragon sign as Andres?
A. Yes sir.
Q. And the signature of Andres is the same as that which
226 appears in this document?
A. Yes sir; sometimes he signs as "Andres" and at others "Andres Mondragon."
Q. Who is this Joaquin Sierra to whom the letter is addressed?
A. He is my attorney-in-fact.
Q. This letter mentions a cousin of whom the writer says in these words "leave the cousin there in Iloilo," do you know who this cousin is?
A. He refers to me, because he is my relative; Andres is my relative.
Q. In this letter reference is also made to a hacienda. For example, it says "I am sure that this year the hacienda will yield more thousands of sugar than last year." That is the way the first paragraph ends. To what hacienda does this refer?
A. Hacienda Subungcogon.
Q. And in this other part where it says—in other words, when reference is made in this letter to a "hacienda," does it refer to any other hacienda than that of San Jose or Subungcogon?
A. That is the only one referred to.

Seva: I offer in evidence the eight documents which compose Exhibit 30, with the reservation that they can be identified in order that they may be admitted at the trial and I shall have to make
227 this identification after this lady has finished her testimony.
Next I offer this document as Exhibit 31 because it is very pertinent to the question since Andres Mondragon makes statements in it regarding the hacienda San Jose, this Andres being, according to the petitioner, one of the petitioner's predecessors in interest.

Q. I am now going to show you a document which is marked for identification 32 and you will tell me if you recognize it. (He shows it to her.)
A. Yes sir.
Q. What document is this? What does this document deal with?
A. Some lands that a relative of mine transferred to me.
Q. Who is this relative of yours that made the transfer?
A. Rafael Siason.
Q. Do you remember if this Rafael Siason testified as a witness in San Carlos?
A. Yes sir; he testified.
Q. And do you recognize the signatures of Rafael Siason, Gregorio Bocalin, Salvador Abeleda, and Tomas Alvarado which appear in this document?
A. Yes sir.
Q. Are they the genuine signatures of these persons?
A. Yes sir.
Q. Here in this document your name is mentioned, especially on

page 2, among others, where it speaks of Doña Romana
228 Gauzon de Vega and adds that the writer of the document treats her as a niece. You will remember also that this same witness in testifying in San Carlos said that you were his daughter. Will you explain to the court how this discrepancy occurred? Are you the daughter or the niece of the said Rafael Siason?

A. I am his niece.

Q. To what lands does this document refer? You say that by virtue of this document he transferred some land to you? What lands does this land refer to?

A. The hacienda Subungcogon.

Q. Has it any other name?

A. San Jose or Subungcogon.

Seva: I offer as proof this same document as Exhibit 32.

Sepulveda: I oppose the admission of this document Exhibit 32 because it does not reunite the conditions required by law. It is a deed of gift, in which the donor does not set forth that he possesses sufficient property for his support and that he does not make the gift in prejudice of any of his heirs. Neither does the acceptance of the donee appear in the document. It does not contain the legal requirements for a gift.

Seva: We can shorten all discussion on this point by informing the court that we do not claim that this document is a title of transfer of ownership. It is a document which is signed by Rafael Siason, whose signature is recognized by the witness. Rafael Siason
229 testified that the witness was his daughter, and in this document which was undoubtedly signed by him he says that she is his niece, or that he treats her as his niece, and the witness now corroborates the relationship which exists between them. Whether it is or is not a deed of gift and whether or not the acceptance of the witness appears, this is a requirement of the Civil Code, and the Civil Code was not in force in the Philippines in 1881, in which year the document was executed. The government is well aware of the fact that we have a royal title and this document is simply to show the relationship existing between Rafael Siason and the witness; at the same time it corroborates the statement made by Rafael Siason at the former hearing to the effect that these lands proceeded from him.

Court:

Q. Are the lands referred to in this Exhibit 32 those which compose the hacienda San Jose?

A. Yes sir.

Q. And do they correspond to those mentioned in your royal title?

A. Yes sir.

Court: The document is admitted.

Sepulveda: Is the area given in this document the same as that which appears in the *real* title which was issued to you?

230 A. No sir; the area is not the same as that given in the royal title.

Q. Which one gives the greater area; the royal title or the document?

A. The royal title.

Q. And where did you get this area from?

A. The part bought from one Pedro Baguio.

Q. In that case this document shows a lesser area than that contained in the royal title?

A. A lesser area.

Seva: Is it not true that a cavan of corn, a cavan of land sown to corn equals approximately five cavanes of land sown to rice?

Sepulveda: I object to the question as being suggestive.

(Mr. Seva continues:)

Q. How many cavanes in rice seed equals a cavan in corn seed? That is to say, you take a cavan of corn and plant it; now if you had to sow in rice the land that would be covered by this cavan of corn, how many cavanes of rice would it take?

A. Perhaps about five cavanes, I am not sure.

Q. And when this document was executed in the year 1881, was the land surveyed for the purposes of the instrument?

A. No sir.

Q. So that where it says "which land measures 100 cavanes of corn, more or less," how many cavanes of rice, more or less, would the land measure?

231 A. 500 cavanes.

Seva: That is all with respect to this document.

Sepulveda: Have you at any time planted corn?

A. Yes sir.

Q. How much land would a ganta of corn seed cover?

A. I do not remember how much.

Q. Did you ever plant the whole of your hacienda to corn?

A. No sir, not the whole of it; a part only. Some years in one place, in another year in another place, but the whole hacienda in one year, that could not be.

Q. The boundaries appearing in this document Exhibit 32 are the same as those that appear in the royal title issued to you by the Spanish government?

A. No sir, it is the same on the north and the east, but not on the south.

Q. What difference is there on the south?

A. The river Gigalaman.

Q. In this document, what boundaries are given on the south?

Seva: I object to the question. I have stated the purpose for which we have exhibited this document. According to the attitude of the fiscal in the representation in which he appears with regard to this document, it would appear that we wish to claim title of ownership through this document and we are not trying to prove that.

Sepulveda: I would state to the court that the object of this question is to find out if the land which Romana Gauzon possessed
232 was simply the land which appears in the title and which also appears in this document, because the opposition of the government is directed against the excess of land which, up to the present, I am sorry to have to say, has not been identified either by the petitioner or the objector.

Court (to the witness): Answer the question. What boundaries does this document give to the property on the south?

A. The beach is there.

(Mr. Sepulveda continues:)

Q. Is the land which was adjudicated to you in the royal title the only land which you possess there on the hacienda San Jose?

A. The royal title contains more land at the side, on the slope of the mountain of greater extent than in the royal title.

Q. Your royal title contains a lesser area than that asked for in the application to the registry for the certificate of registration?

A. Yes sir, it is less.

Q. Is the land described in the royal title your only land? Have you no other land?

Seva: The question has already been answered.

A. That which is not applied for is the part by the mountains.

Court: All the documents presented are admitted.

Seva: Tell us, madam, how many piculs of sugar has the hacienda San Jose or Subongcogon produced, including the present
233 crop which is being ground, but excluding the crop of sugar for which the administrator, Mr. Pomar, rendered an accounting?

A. About 51,000 piculs of sugar.

Seva (To the court:) Now I am going to present as exhibits the documents which for identification I mark as Nos. 33, 34, and 35. These are certificates issued by the clerk of the Court of First Instance of this province, taken literally from various portions of the record in case No. 249. By document No. 33 it appears that the property attached from this objector was by the sheriff of this province placed in possession of Mr. Juan D. Pomar. In document No. 34 it appears that the Court of First Instance ordered said receiver Juan D. Pomar to present an itemized account of his transactions with regard to the sale of the sugar produced from the grinding of the sugar cane, from the sugar cane that was attached from the objector, and allowing him 15 days for the purpose. In document 35 are to be found the proceedings of the sheriff, through one of his deputies in this province, and in these proceedings appears the signature of Juan D. Pomar, as receiver. Here I believe I am entitled to renew my offer of the document marked up to the present 5, 6, 7, and 18 as exhibits already admitted by the court, for the reason that a witness has testified with regard to them, which witness was ready

to be cross-examined by the other side, his testimony having related to matters of fact.

234 Court: They are admitted.

Sepulveda: No objection.

Seva: I will now testify as a witness.

Testimony of Witness Agustin P. Seva.

Witness was duly sworn; his personal circumstances appear in the record.

Witness: The eight documents which compose Exhibit 30 of this objector are authentic copies furnished me as the then representative of the defendant Doña Romana Gauzon, furnished, I say and repeat, by her representative Juan D. Pomar. His signatures appear in the various documents which compose this exhibit; they are his authentic signatures, with the exception of three of these documents which are signed by the manager of the Iloilo branch of the Compañia General de Tabacos de Filipinas, petitioner in this case, which manager is named Benito O. Carranceja. The stamp of the petitioner company appears at the foot of these vouchers. These accounts are the accounts which in case No. 249 the Court of First Instance ordered the receiver Juan D. Pomar to render with respect to the sugar produced from the attached cane at the same time as the right of repurchase of this objector, defendant in that case, was attached. These accounts are referred to in the judgment dictated in case No. 249. Notwithstanding that the order was dictated in case

235 No. 249, these accounts are attached to the record of case No. 85. They are the same accounts that were dealt with in the decision of the Court of First Instance of Occidental Negros, a decision which assuredly disapproved them. From this decision the receiver Juan D. Pomar appealed and his appeal is still awaiting hearing and decision in the Supreme Court. I suppose the court would have no objection accepting them after they have been identified?

Court: Admitted.

Seva (To the court:) There is a little motion I should like to make to the court which consists in slight corrections of the errors which, after a conference with the stenographer who took the notes, I find were due to the haste with which they are written, to the speed at which we talked during the hearing and the impossibility on the part of the stenographer of revising his transcription for lack of time. As the court will see, it is such an insignificant matter that if it were not that some of the sentences lack sense I would not bother the court with the matter.

For example, on folio 7 of these notes (folio 699, second part of record No. 6303), in the place of the words he sabido (I knew) there should appear es cosa sabida (it is known).

On folio 9 (701 of the same part and record) it says "the attach-

ment of the right of repurchase means the inhibition of this
236 right; in other words and in vulgar language, the objector cannot have the right of repurchase because her hands are tied." Undoubtedly I said, or at least I meant to say, that the objector cannot exercise the right of repurchase because her hands are tied. The change consists in substituting the word have for exercise.

And finally another little thing which appears at folio 29 (721 of the same part and record). Here the phrase cannot be understood as it is written. I will read it to the court:

Q. Were you capitán municipal or did you in any other way have to perform duties that would unavoidably have caused you to know of any such disturbance of Wapa's possession?

A. In Spanish times I was cabeza de barangay.

Q. As such, I suppose you would not be obliged to know of any disturbancies in the possession of Mapa's land?

A. What should I know about that?

Q. And I figure that your knowledge with the respect to the undisturbed possession of all the other persons to whom you have referred, such as Magdalena Masaba, Gregorio Wahinay, Francisco Solidario, and Severo Uyog, would also be a knowledge of the same extension as the knowledge you possess with regard to Leon Mapa, is
237 not that so?

A. Yes sir.

I ask the court to substitute the word extension with the word sort. That is all, and we close our proofs.

Court: The petition of Mr. Seva in regard to the proposed amendments is granted.

Sepulveda: I wish to state that the Government insists on the proposition with regard to the excess which up to the present does not appear to be identified. The plan has not been identified nor in what part of it consists the excess.

Seva: But that is not my fault!

Court: The decision will be dictated after the stenographic notes have been transcribed.

(Here follows the certificate of the stenographer.)

238 UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Case No. 6303.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Petitioner,

—

ROMANA GAUZON, Widow of Vega, and THE INSULAR GOVERNMENT, Objectors.

Decision.

The Compañía General de Tabacos de Filipinas seeks the inscription and registration of a parcel of land situated in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, known under the name of the hacienda San Jose, formerly Subongcogon. The plans and technical description of the hacienda accompany the application.

The land which composes this hacienda came to belong to the Compañía Tabacalera by virtue of the foreclosure of a mortgage credit executed in its favor by Doña Romana Gauzon, widow of Vega, former proprietor of the property; the said credit having become due and the property put up at public auction it was adjudicated in final sale to the creditor.

239 The original titles to the property consist of a royal title issued by the Spanish Government to 465 hectares, 33 ares and 82 centares, and various public and private documents as to the rest of the 137 hectares, 42 ares and 83 centares, up to the total of the whole area of the hacienda described in the application.

To this application two oppositions have been put forward; that of the Attorney-General in representation of the Government of the Philippine Islands as to the 137 hectares, 42 ares and 83 centares of excess above the royal title and that of Romana Gauzon, who claims that in the title issued to the petitioner company there should be set forth the right of repurchase which she has to the property for the period of four months and two days, and which should be reserved as the balance of the year to which she has a right.

Examining first the opposition of the Attorney-General, the evidence may be divided into two parts; proofs presented by the petitioner; and those adduced by the objector Romana Gauzon.

The proofs of the petitioner consist of deeds of sale in its favor to all of the land not included in the royal title, ratified by the testimony of witnesses; and the proofs of the objector also consists of private documents and the testimony of witnesses tending to show that the part of the hacienda which is not included in the royal title already belonged to Doña Romana Gauzon and that all together it constituted the whole of the said hacienda which belonged to her.

240 For the purpose of this litigation, and that should be the only object of the Court of Land Registration, it is not neces-

sary to here consider which of the proofs presented by the parties prevails over the other. Whether the 137 hectares, 42 ares and 83 centares not included in the royal title originally belonged to Doña Romana Gauzon, or whether the petitioner company acquired them subsequently and separately from other owners, the proofs all converge on this point; that the said 137 hectares, 42 ares and 83 centares of excess have been cultivated by and held in open, continuous, peaceful and adverse possession by the former owners for more than thirty years, and that the owner and actual possessor of this tract has the right to a certificate of title thereto.

The representative of the Insular Government furthermore alleges that the property has not been identified by the petitioner. This allegation we consider to be wholly superfluous. The documents attached to the record and the testimony adduced show that the area, situation, and bounds of the hacienda San Jose or Subongcogon are the same as those described in the application and plan; these documents are an integral part of the record. The representative of the Insular Government has not shown that the said bounds and situations are other than those shown or that there is in the said municipality of San Carlos, Occidental Negros, any other hacienda San Jose which might be confounded with this one. Even counsel for the objector Romana Gauzon has not raised any objection as to
241 the identity of the property; he has adduced evidence to prove that everything described in the application and plan was owned by the objector before passing into the hands of the petitioner company.

The opposition of Romana Gauzon was not precisely directed against the application. She is willing that the certificate of title issue to the petitioner and only asks that she be reserved the right to repurchase the property for the period of four months and one day, the rest of the year to which she has a right by virtue of the decree of the Court of First Instance. The question, then, is reduced to determining whether the right to repurchase property sold on foreclosure of mortgage exists.

The law in force with regard to this matter is found in sections 254 to 261 of the Code of Procedure in Civil Actions. These sections do not mention the right of repurchase as existing in the mortgage debtor. On the contrary, article 257 says that: "The sale, when confirmed by decree of the court, shall operate to divest
242 the rights of all the parties to the action and to vest their rights in the purchaser." After the judicial sale, the mortgage debtor has no right to redeem the thing mortgaged. The Supreme Court, in the case of Warner, Barnes and Company versus Roman and Cirilo Jaucian, has laid down the rule that the mortgage debtor can only redeem his mortgage property if he pays the debt, together with interest and costs, before the sale, to prevent the sale of his property (13 Phil. Rep., 4).

Counsel for Doña Romana Gauzon alleges that this right of redemption was recognized by the Supreme Court in the decision rendered in the case of the same petitioner Compañía General de Tabacos de Filipinas versus Romana Gauzon; but from an examina-

tion of this decision it appears that the Supreme Court said that "whether the law grants the right of repurchase in the foreclosure of a mortgage, quaere" (13 Phil. Rep., 482). This procedure on execution is that set out in the sections above cited of the Code of Civil Procedure and is the only one which governs the subject.

Counsel for Doña Romana Gauzon has presented evidence with regard to civil action had in the Court of First Instance of Occidental Negros between her principal and the petitioner, in the endeavor to show that the said right of redemption was allowed, that this
243 right was attached, that this attachment was not released, and that she has still four months and two days within which to redeem the property after release of attachment. This court cannot and should not consider questions completely foreign to its jurisdiction. The Court of Land Registration has exclusive jurisdiction to hear all applications for the registration of titles to lands, buildings, or real rights in properties situated in the Philippine Islands. Its decisions should be directed to these matters alone.

The said counsel for the objector asked for an ocular inspection of the northern part of the property, on which there are signs of the boundaries of the same, proven without contradiction in the record; but apart from the fact that the court considers this proof to be unnecessary, at the last hearing in this case held on the 18th of February, 1911, in the municipality of Bacolod, Occidental Negros, the said counsel closed his proofs without insisting on the said inspection.

From the whole of the evidence adduced at the trial the following facts may be said to have been proved:

1. That the Compañía General de Tabacos de Filipinas is the exclusive owner of the property described in the application and plan attached to the record.

2. That it derives its property from a real title and adverse possession of more than thirty years, this being computed as including that during which it was held by former owners.

244 The opposition of the Attorney-General was not accompanied by proof of any sort.

And as a conclusion of law we find that the claim of Doña Romana Gauzon to have her right of redemption inscribed in the certificate of title is not supported by any law whatever.

In consequence the oppositions of both the Attorney-General and Doña Romana Gauzon are overruled; and after a general declaration of default we hereby decree adjudication and registration of the property described in application and plan in the name of the Compañía General de Tabacos de Filipinas.

When this decision becomes final, let a copy thereof be sent to the registry in conformity with Act No. 496. So ordered.

Bacolod, February 24, 1911.

(S'g'd) H. BENITEZ,
Auxiliary Judge.

A true copy.
(S'g'd) VICENTE INSUA,
Deputy Clerk.

245 Heading and Title Omitted.

Case No. 6303.

Comes now the undersigned attorney in behalf of the objector Romana Gauzon, widow of Vega, and to the Honorable Court respectfully sets forth:

That on this date he was notified of the decision rendered in the above-entitled case.

That the said objector excepts to the said decision and asks for a new trial on the grounds that the evidence presented in the case did not sufficiently justify the decision of the court, and that the said decision is contrary to law.

Bacolod, February 24, 1911.

(S'g'd) A. P. SEVA,
Attorney for the Objector
Romana Gauzon, Widow of Vega.

(Here follow oath of service of copy and certificate of notary.)

Heading and Title Omitted.

Case No. 6303.

Order.

Counsel for the objector Romana Gauzon has this day filed a motion in which he prays for a new trial in this case on the grounds that the evidence adduced at the trial did not sufficiently jus-
246 tify the decision rendered on this date; but as the said decision was rendered in accordance with law his petition is denied. The clerk will note the exception made by counsel for objector to the decision rendered in the said case.

Bacolod, Occidental Negros, P. I., February 24, 1911.

(S'g'd) H. BENITEZ,
Auxiliary Judge.

A true copy.

(S'g'd) VICENTE INSUA,
Deputy Clerk.

(Here follow notices of receipt of copy, etc.)

Heading and Title Omitted.

Case No. 6303.

Comes now the undersigned attorney in behalf of the objector Romana Gauzon, widow of Vega, and to the court respectfully sets forth:

That he was yesterday notified of the ruling of the court on his motion for a new trial.

That he excepts to the said ruling and hereby announces his intention to file the corresponding bill of exceptions within the period allowed by law.

Bacolod, February 25, 1911.

(S'g'd) A. P. SEVA,
Counsel for the Objector,
Romana Gauzon, Widow of Vega.

(Here follow oath of service of copy and certificate of notary.)

247 Heading and Title Omitted.

Case No. 6303.

To the Petitioner and Its Attorney:

By these presents you are notified that the appellant and objector, Romana Gauzon, has presented a bill of exceptions in the above-entitled case and has submitted it to the Court of Land Registration in order that it may be heard and approved at 9 o'clock a. m. of the 14th day of the present month.

Bacolod, March 4, 1911.

(S'g'd) A. P. SEVA,
Attorney for the Objector,
Romana Gauzon, Widow of Vega.

(Here follow notices of service of copy and notary's certificate.)

(Here follow exception and motion for new trial of Attorney-General.)

248 UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Case No. 6303.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner.

Minutes of the session held by the Hon. Higinio Benitez, Auxiliary Judge, in Manila, this 16th day of March, 1911, at 9 o'clock in the forenoon.

The case being called for the hearing on the bill of exceptions neither the petitioner, nor the objector Romana Guazon, nor any person representing them appeared. Assistant Attorney General Mr. Diego Gloria appeared in behalf of the Director of Lands.

Mr. Gloria stated that he had prepared and presented yesterday a written exception to the decision of the court in this case and that he therein prayed for a new trial on the grounds he had advanced

therein, and that he had no objections to offer to the bill of exceptions filed by the objector Romana Guazon.

The court resolved to pass upon the document referred to by Mr. Gloria after an examination of its contents; he further resolved to consider the approval of the bill of exceptions as soon as the clerk of the court should report that he had compared it with the original documents attached to the record.

No stenographer.

(Sgd.) VICENTE INSUA,
Deputy Clerk of Court.

Certified O. K.

(Sgd.) H. BENITEZ,
Auxiliary Judge.

249 Heading and Title Omitted.

Case No. 6303.

Order.

This court having been advised by the clerk that a comparison of the bill of exceptions with certain parts of the original record of this case only discloses a few unimportant errors which do not affect the contents thereof, the said bill of exceptions is hereby approved and the clerk of the court is ordered to send the said bill, together with the original record, to the Supreme Court of these Islands for the purposes of the appeal, after the undersigned judge shall have certified the said bill of exceptions.

Manila, P. I., March 17, 1911.

(Sgd.) H. BENITEZ,
Auxiliary Judge.

(Here follow certificate of clerk and notice of service of copy.)

Heading and Title Omitted.

Case No. 6303.

Order.

The motion for a new trial presented by the acting Attorney-General is denied and his exception noted. The bill of exceptions to be presented within the legal period.

Manila, P. I., March 20, 1911.

(Sgd.) H. BENITEZ,
Auxiliary Judge.

(Here follow certificate of clerk and notice of service of copy.)

(Here follow order of March 22, 1911, motion of Attorney-General of March 23, 1911, also motion of Attorney-General of March 27, 1911, order of March 30, 1911, order of April 1, 1911, order of 29th of April 1911 of court of land registration in banc, all with reference to the motion for a new trial of the Attorney-General on behalf of the Insular Government which are omitted as immaterial in this appeal.)

250 Heading and Title Omitted.

Case No. 6303.

Order.

The clerk of the court having submitted for our consideration the bill of exceptions filed by counsel for the objector Romana Gauzon, which was approved and certified by this court on March 17, and having also submitted the order of the same date, issued by the Honorable Benitez, ordering the said bill of exceptions to be sent up to the Supreme Court of the Philippine Islands, together with the original record, and the motion for a new trial filed by the Attorney-General, in representation of the Insular Government, which is also an objector in this case, still awaiting decision by the court in banc; the clerk of the court is hereby ordered to send up to the Supreme Court of these Islands immediately the said bill of exceptions filed by the objector Romana Gauzon, without prejudice to later sending up the record of this case once the motion of the Attorney-General that is now pending before the court in banc has been finally decided. So ordered.

Manila, May 17, 1911.

(Sgd.) CHAS. H. SMITH,
Judge, President of the Court.

(Here follow certificate of clerk and notice of service of copy.)

251 (Here follow various orders and motions with reference to the correction of the plan of the petitioner and the withdrawal of the appeal of the Attorney-General which are omitted as immaterial.)

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6995.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

February 10, 1912.

MORELAND, *J.*:

This is an application to register petitioner's title to a tract of land in the municipality of San Carlos, Province of Negros Occidental. On the trial default was entered as against all the world except Romana Gauzon, viuda de Vega, and the Director of Public Lands. Upon the proofs presented at the hearing, following the joinder of issue upon answer by the parties opposing, the Court of Land Registration, on the 24th day of February, 1911, entered a decree registering the title as prayed by the petitioner. From this judgment only the respondent, Romana Gauzon appealed.

These are the facts:

Prior to September, 1905, the hacienda San Jose was the property of Romana Gauzon, viuda de Vega, by virtue of a royal title issued in her favor. Some years prior to said date said respondent had given a mortgage to the petitioner in this case upon said hacienda. On the date above named, said mortgage not having been paid and the term for which it was given having expired, the petitioner herein began an action to foreclose said mortgage, and in April 1906
252 foreclosure and sale under said mortgage was ordered. In said decree the mortgagor was given the legal term within which to pay the mortgage debt and, in default thereof, sale of the property at public auction was ordered. In July 1906, the time for payment set in said decree, the amount found to be due upon the mortgage not having been paid, the property was ordered sold to satisfy the amount. The sale took place in September 1906 and the petitioner herein became the purchaser of said property thereat. When the certificate of sale was issued by the sheriff it contained a clause reciting that the property was sold subject to the right of redemption to be exercised by the respondent herein at any time within twelve months thereafter.

The sum for which the property sold on the foreclosure sale not being sufficient to pay the mortgage debt, interest costs and charges, the petitioner herein, on the 12th day of March, 1907, began a separate and independent action to recover the balance of said mortgage debt which still remained unsatisfied. In this action an attach-

ment was issued against the property of the defendant Romana Gauzon and was levied upon (*a*) the interest of the defendant in and to the crop of sugar cane then growing upon the hacienda San Jose, and (*b*) the rights of the defendant in and to the equity of redemption in the hacienda sold under the foreclosure proceedings above referred to. On August 29, 1907 judgment was rendered in this action awarding to the plaintiff company judgment for P8,338.62. This judgment contained an order that the said right of redemption should be suspended from May 10, 1907 forward until the said judgment should become final. In August 1909 further proceedings
253 were had in the original foreclosure suit in which an accounting by the receiver of the mortgaged property was required and made with reference to the growing crop of sugar cane above referred to, and in September, 1909, the Court of First Instance, upon said proceedings, rendered in favor of the plaintiff company in the second cause, namely, the one to recover the balance due on the mortgage debt, had been wholly satisfied by the payments which the receiver had made to the said Company out of the proceeds obtained from the sale of said crop of sugar cane. The receiver is — only one who appealed from this judgment. Neither the Compania General de Tabacos de Filipinas nor Romana Gauzon appealed therefrom. That case has not yet been presented to this court.

The petitioner in this case, according to his allegations and arguments, derives his title to the land which he seeks to register from two independent sources, namely: to the hacienda San Jose, consisting of 465 hectares, 33 ares, and 83 centiares, through the foreclosure of the mortgage upon said hacienda and the purchase of the same at the foreclosure sale; to so much of the land described in the petition as is not included within the limits of the hacienda, namely, 137 hectares, 42 ares, and 83 centiares, by purchase from one Andres Mondragon.

Strictly speaking the respondent does not oppose the registration of the title of the plaintiff in and to the hacienda San Jose proper, but asks merely that it be registered subject to her alleged right of redemption. As to the remaining portion of the land described in the petition, the respondent asserts that she is the owner thereof and that therefore the same ought not to be registered in the name of the petitioner.

254 Dealing with the second question first, we note that in regard to this contention, the Court of Land Registration, in its opinion and on which the judgment appealed from is based, makes this statement:

"Whether the 137 hectares, 42 ares, and 83 centiares, the land in excess of that described in the royal title, belonged in the first instance to Doña Romana Gauzon, or whether the petitioner acquired said lands thereafter and separately from other proprietors, it is certain that all the proofs go — establish the definite proposition that the said 137 hectares, 42 ares, 83 centiares, have been cultivated and in open, contin-ous, peaceful, and adverse possession of the persons from whom the petitioner bought for more than thirty years, and

that the present owner and possessor of said lands has the right to a registered title thereto."

We are of the opinion that this finding can not stand. It is, in our judgment, clearly against the weight of evidence. The petitioner bases its rights in this proceeding upon Exhibit "C," which is the instrument of sale of said 137 hectares from Andres Mondragon to the petitioner. It appears from the terms of this document itself that Mandragon bases his right to make the sale set forth in the document merely upon possessory rights of his vendors, which he, by said instruments, purchased from them. The paragraph in said instrument marked "Primera" reads, in part:

"Don Andres Mandragon y Mapa declares: That in the barrio of Subang, Municipality of San Carlos, Province of Negros Occidental, Philippine Islands, he is in possession of land under claim of ownership acquired by just and legal titles more than two years before, but that the former owners, from whom he acquired said possession and cultivated said lands under claim of ownership from time immemorial, * * *."

In the second paragraph of said instrument appears the following:

"Sr. Mandragon also declares that, at this moment for lack of sufficient data it is impossible for him to state with exactitude
255 the area of the land which he has agreed to sell to said company, but is sure that it is annexed to the said hacienda San Jose, and that the actual limits of said hacienda San Jose on its northern parts, includes said land. * * * that the true extension and actual limits of the said hacienda San Jose include said parcel of land, and are those which appear in the plan of said hacienda made by said surveyor."

The instrument also contains a provision that of the P1250, which forms the purchase price of said lands, only P500 should then be paid to the vendor, the balance being delivered only upon the condition precedent that the petitioner herein should be able to obtain and should obtain a Torrens title to said lands; and to that end the vendor agreed to be a witness upon the hearing or hearings in the proceedings to register, and to hold himself ready to go to any part of Occidental Negros, at his own expense, to assist the company in obtaining said registration. He further agreed in said instrument that he would furnish to the Company any other witnesses which were necessary to effectuate said purpose and pay all the costs and expenses incident thereto except those incurred in travel by sea.

Upon the trial the petitioner, evidently realizing that the sale of a mere possessory interest by one who had himself occupied the lands for only two years was a slender basis upon which to ask the registration of his title, and desiring to strengthen it as mush as possible, attempted to prove by the persons from whom Mandragon alleged to have obtained the possessory rights which he sold to the Company the fact of their occupancy for a period sufficient to obtain title by prescription. In this attempt the petitioner failed in our opinion. It is doubtful if, upon the face of its own proof, the petitioner has

established such a title to the land as would warrant its regis-
256 tration under the law; but that doubt, if there be one, is resolved against the Company when we advert to the proof presented by the respondent, Romana Gauzon. She has demonstrated, by the testimony of several witnesses, that each one of the persons from whom Mandragon is alleged to have purchased his possessory rights was either a tenant, aparcero, or laborer of the respondent upon the hacienda San Jose, that their occupation of said lands was by virtue of such relationship, that as such it was subordinate to the rights of the respondent, and that their occupancy was her occupancy. Not only has she established this by the oral testimony of witnesses, but she has introduced documentary evidence which makes her case in that regard substantially complete. She has introduced several books of account and memoranda of contracts in which *which* appear the relations which existed between the vendors of Mandragon and the respondent in this case during the time in which it is alleged that they were occupying adversely. Those books are many years old, bear every indication of genuineness, are completely authenticated, and no attempt whatever has been made to impeach them. They show conclusively that the persons who are alleged to be the vendors of Mandragon occupied the lands in controversy without claim of ownership and without the assertion of any rights whatever except those which depended upon the contract or will of the respondent.

It is, of course, elementary that one can convey no more interest than he has. Mandragon's vendors having no title or rights whatever in the land itself, could convey none to Mandragon; and Mandragon having no title whatever to the lands in question could
257 convey none to the petitioner. The quotations above made from the instrument of conveyance between Mandragon and the petitioner show the doubt which the latter entertained as to the validity of the title which it received from Mandragon, and evince an intention on its part to protect itself against the contingency of a failure of those rights by reserving more than seven-twelfths of the purchase price and making its payment dependent upon the validity of the title which it had just received.

We are satisfied, upon the whole case, that the clear weight of the evidence, in fact the overwhelming preponderance of the evidence, is in favor of the contention of the respondent that she has demonstrated a better right to the land in question than has the petitioner in this case.

In view of what has been said, and after a thorough examination of the whole record, we are unable to understand the basis of the assertion in the brief of the appellee as follows:

"Properly considered, Romana Gauzon does not oppose the registration of the title which is the subject matter of these proceedings. On the contrary, the position of said party is to the effect that said title be duly registered, but subject, however, to the alleged right of said Romana Gauzon to redeem and repurchase the said property. The sole question to be considered in this connection, therefore, is

whether or not the alleged right of redemption now exists in favor of said Romana Gauzon."

It was doubtless intended by counsel in this statement to restrict its application to the land embraced within the hacienda San Jose proper, and not to apply it to the 137 hectares which while it joins said hacienda, was not, as spoken of in this litigation, a part thereof.

The second question is one of law. What is the effect of a decree of foreclosure or judicial sentence barring the equity of re-
258 demption or equitable right of the mortgagor under the Code of Civil Procedure of these Islands:

It is a principle well established that the right of redemption is a statutory right and does not exist in the absence of statute. In the — of Parker v. Dacres, 130 U. S. the court says, at page 47:

"Counsel for the plaintiff speaks of a common-law right of redemption after sale that attaches in the absence of any statutory provision on the subject. We are not aware of any such right existing at common-law, or in the system of equity as administered in the courts of England previous to the organization of our government. It is a mistake to suppose that the case of Clark v. Reyburn, 8 Wall. 318, recognizes a right of redemption after a sale under a foreclosure decree independently of statute. It is there state- that by the common law, when the condition of the mortgage was broken, the estate of the mortgagee became indefeasible, and that equity interposed and permitted the mortgagor, within a reasonable time, to redeem upon the payment of the amount due before sale; also, that, according to the settled practice in equity, when proceedings to foreclose were not regulated by statute, this right to redeem before sale is fixed by the primary decree, and that only in the event of final default in paying the amount ascertained to be due is an absolute sale ordered. * * * It is clear that the right to redeem after sale, wherever it exists is statutory."

It is equally certain that the right of redemption in the form in which it is asserted in this case, i. e., after sale under decree of court, did not exist under the Spanish Law. Mr. Coote says: "By the civil law, the debtor might redeem the estate on payment of his debt, at any time before sentence passed." Coote on Mort., 10. "Until debarred by judicial sentence." Ibid., 209. "Until decree of foreclosure." Ibid. "The mortgagor is the equitable owner until the land is redeemed or foreclosed." Ibid, 319. Under the Spanish Law the right of redemption was destroyed by the sale under the decree of foreclosure.

"Both at law and in equity," says Mr. Jickling, "the conveyance is at first conditional, not absolute; and in both, the estate
259 may, on an event, be discharged of the condition, and become the indefeasible property of the mortgagee. At law, that event is the non-payment at the day agree- upon; in equity, it is the decree of a Court of judicature. In the former jurisdiction, it is conventional; in the latter, judicial." Jickling's Analogy, 66.

Chancellor Kent, in his definition of a mortgage, states that "the legal ownership (of the land mortgaged) is vested in the creditor; but in *in* equity, the mortgagor remains the owner until he is de-

barred by his own default, or by judicial decree." 4 Kent., 133. And again: "The equity doctrine is, that the mortgage is a mere security for the debt, and only a chattel interest, and that until decree of foreclosure, the mortgagor continues the real owner of the fee." Ibid., pp. 159, 160.

Hilliard says: "Foreclosure is the process by which a mortgagee acquires an absolute title to the property of which he had previously been only the conditional owner, or upon which he had previously a mere lien or incumbrance." 2 Hilliard on Mort., 1, 1st. ed.

Whenever the decree is pronounced, the event which fixes the limit to the mortgagor's equitable estate has happened; and to say the mortgagor may redeem after "sentence passed," or after he is "debarred by judicial decree," or "decree of foreclosure," is in contradiction of, and directly repugnant to language so explicit and entirely unambiguous, as to preclude the possibility of successful cavil.

The doctrine of the adjudged cases may be stated, without hazarding successful controversy, to be that after decree of fore-
260 closure or judicial sentence, and immediately thereupon, the entire estate, both legal and equitable, becomes vested in the mortgagee, subject only to a judicial sale, from the proceeds of which the mortgagor may, perchance, derive the benefit of a resulting surplus.

This is the general doctrine prevailing in the absence of statute. It may be modified, and is modified, either materially or casually by the legislative authority of the State. Here the mortgagor is entitled to the time intervening until the term of court next succeeding the one in which the decree of foreclosure is made to pay the mortgage debt, interest, costs and charges; and in the event of such payment the land remains his own. The provisions of the Code of Civil Procedure which deal with the foreclosure of mortgagee do not mention the equity of redemption nor do they prescribe anything in relation thereto. Having arrived at the point where the sale is decreed and is to be made, reference is then made to the provisions of the same Code in relation to sales under execution, and the provisions in relation to such sales are made applicable to sale of land in foreclosure. While the provisions of the Code relating to the sale of property under execution, to which the provisions of the Code relative to the foreclosure of mortgages make reference, provide that, where a sale of property is made by virtue of an execution, the debtor whose property was sold shall have one year within which to pay the face of the execution, interest, costs, and charges and to retake the property thus sold, nevertheless, we are of the opinion that it was not the intention of the Legislature to include those provisions in the reference contained in the provisions relating to mortgage foreclosures. The substantive rights of the parties to a mortgage
261 are determined by the general law, and in the present instance, under the Code of Civil Procedure as well as under the general law, it is undoubted that the right of equity of redemption is property and is subject of the same protection which other property receives at the hands of the law. The owner of that equity is entitled to the same consideration which the owner of other prop-

erty receives and he can be deprived of it only under the same circumstances and conditions and with the same formalities. It is equally true, on the other hand, that the equity of redemption, if there be one, being property of the mortgagor and in derogation of the rights of the mortgagee, such equity will not be held to be conferred upon the mortgagor in the absence of clear statutory provisions to that effect. The contract between the parties, construed by the general law, is that to which we must first look to determine their rights, and that contract as interpreted and construed by the general law of the State is, in the absence of special statute, the only source from which the rights of the parties under the contract spring. It being the general rule that the rights which pertain to the mortgagor are completely terminated and cut off by the decree of foreclosure and the sale thereunder, it follows of necessity that his rights can not be continued beyond that point except by clear provision of statute, inasmuch as, in the absence of such provisions, the rights of the mortgagee would become absolute on the happening of that event. We are of the opinion, therefore, that when, in the law relating to the foreclosure of mortgages, reference was made to the provisions of the Code relative to the sale of property under execution it was intended, there being no express words to the contrary, to
262 include in such reference only such provisions as refer to the mere management and conduct of the sale—the mere ministerial acts which must be performed in order that the sale be legal—and not to those provisions which relate to the substantive rights of the parties before or after the sale has been consum-ated.

Nor do we believe that the insertion in the document of sale by the sheriff of the clause relating to the right of redemption resulted in binding the petitioner to that effect. There being no right, in these Islands, to redeem after sale, the act of the sheriff inserting the clause referred to was wholly beyond his powers and therefore, standing alone, ineffective. It was ineffectivve as to the petitioner under all the circumstances. To hold that the act of the sheriff and the acceptance of the document by the petitioner took a right from the petitioner and conferred it upon the respondent would be taking property from the petitioner without any consideration whatever. The petitioner received nothing for releasing his rights and the respondent paid nothing therefor. Besides what may be termed acts of the law, a person can be deprived of property only by his own voluntary act, i. e., by release, conveyance, etc., or by some other act or failure to act giving rise to estoppel. It is not claimed that the petitioner gave the right of redemption to the respondent. It is not claimed that he conveyed or released it. The petitioner received nothing for the transfer of that right and the respondent neither gave nor withheld anything therefor; nor did nor does she suffer in any way from any act of the petitioner in relation thereto. She
263 was in no way prejudiced or misled by the insertion of the clause in question, and she sustained no injury and suffered no detriment by reason of the acts of the petitioner in connection therewith. All her rights in the hacienda were gone when the insertion occurred.

It is the judgment of this court, therefore, that the judgment appealed from be affirmed in so far as it decrees the registration of the title to the hacienda San Jose, proper containing 465 hectares, 33 ares, and 82 centiares, free from the equity of redemption, and is hereby reversed and set wholly aside in so far as it registers in favor of petitioner title to the parcel containing 137 hectares, 42 ares, and 83 centiares. No special finding as to costs.

So ordered.

SHERMAN MORELAND, *J.*

Concur:

C. S. AREELANO,
FLORENTINO TORRES,
VICTORINO MAPA,
E. FINLEY JOHNSON,
A. C. CARSON,
GRANT T. TRENT, JJ.

Filed in the Clerk's office Feby. 10, 1912. (Sgd.) J. E. Blanco, Clerk.

264 UNITED STATES OF AMERICA:

Filed March 29, 1912.

Supreme Court of the Philippine Islands.

Case No. 6995.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Widow of Vega, Defendant and Appellant.

Decision.

Per CURIAM:

The court believes that the interests of justice require that this case be returned for a new trial. In the decision that we have already rendered in this case we were materially led into
265 error on account of the different positions which the petitioner herein has apparently adopted both in this appeal and in the trial court. The petitioner in his application asked for the inscription of 602 hectares of land. According to the record the said land is composed of two parcels, one of 465 hectares, more or less, and the other of about 137 hectares. In the application it is alleged that the petitioner is owner of the land by reason of the foreclosure of a mortgage executed by the objector on the land described therein. The land, according to the mortgage instrument and the deed of sale made by the sheriff, is described as being 465 hectares in area. In the petition it is asserted that the land actually

mortgaged measures 602 hectares, thus including therein the 137 hectares above-mentioned. Therefore the allegation contained in the petition and the position taken by the petitioner when he filed his application, were that the mortgagor was the owner of the 137 hectares, as well as of the 465 hectares, at the time she executed the said instrument. This must necessarily be the case, because otherwise the mortgage would be void and of no value as to the 137 hectares and the title of the petitioner thereto based on the mortgage would also be valueless.

At the hearing of the case, nevertheless, the petitioner apparently took the position that, at the time of executing the said mortgage, the mortgage debtor Romana Gauzon was not the owner of the 137
hectares alleged in the application to be included in the
266 mortgage, but that the said 137 hectares were the property
of one Andres Mondragon. The petitioner introduced various witnesses at the trial to prove that Romana Gauzon was not the owner of the 137 hectares at the time of executing the mortgage and that the same were the property of the said Mondragon who had obtained his title by occupation and purchase. To support the testimony of these witnesses and to make his position in this respect wholly clear, the petitioner presented in evidence a deed to the 137 hectares above-mentioned, executed by Mondragon in its favor. From all of the foregoing, then, we have the petitioner trying to defeat the allegations of his own petition.

On the other hand, the objector, Romana Gauzon, who naturally would be expected to deny the allegations of the petition and to be ready to help the petitioner contradict these allegations, we find to be taking a different stand and supporting with her own evidence the allegations of the petitioner. To this end she presented conclusive proof to show that when she executed the mortgage she was the owner of said 137 hectares. Not only this, but during the whole of the trial her counsel not only sought to prove this fact but he also admitted, tacitly or expressly, that the 137 hectares were included in the mortgage executed by the objector in favor of the petitioner.

The case being brought to this court on appeal, we find that the
petitioner makes the following statement at the beginning
267 of its brief:

"The petitioner derives its title from two independent sources, to wit, (*a*) to the hacienda San Jose of Romana Gauzon by means of the foreclosure of a mortgage upon the said hacienda, and purchase at the subsequent sale; and (*b*) to that part of the land which is not comprised within the limits of said hacienda of San Jose, from Andres Mondragon, who sold to the petitioner the title that he had secured by continuous possession on his part and that of his predecessors in interest."

It appears to us that this becomes almost an admission that the 137 hectares of land were not included in the mortgage executed by the objector to the petitioner; and there appears to be a sort of contradiction between this statement and the allegations contained

in the application that not only were the 465 hectares obtained by the foreclosure of the mortgage but the 137 hectares as well.

On the other hand, the objector, in this court as well as in the lower court, apparently does not dispute the allegations of the petitioner that the mortgage included the 137 hectares as well as the 465 hectares. The reason why she did not do otherwise in this court, as well as in the lower court, is due to the principal attitude adopted by the defense in this case. The principal proposition on which she based her defense, in fact the only grounds she relied on, was that she had the right of repurchase over all the lands included in the mortgage, whatever they might be. This is her defense. All her efforts were directed to maintaining this defense and this
268 alone. It is evident that if she had the right of repurchase over all the lands included in the mortgage it would not matter whether the 137 hectares were included in the mortgage or not. It would not have cost her any more to repurchase both parcels than to repurchase one only. In this sense she seems to have lost sight of all other points in the case and devoted herself exclusively to maintaining that right. Looking at the position of the petitioner from the same point of view we do not see what its object was in contradicting at the trial the allegations of his petition with respect to the inclusion of the 137 hectares in the foreclosure of the mortgage, unless it was probably as follows: That if the petitioner could establish the fact that the 137 hectares were not included in the mortgage, and the other fact that it had obtained its title from Mondragon, then the 137 hectares would assuredly be his even though the court should find that the defendant had the right to repurchase from it the lands included in the mortgage.

The position taken by the petitioner during the trial, so contradictory to what was clearly alleged in his petition, might have had something to do with inducing the objector to adopt the position she took.

It was this attitude with respect to the 137 hectares as shown in brief of petitioner in this court which diverted our attention from the consideration of the real claims of the objector made in certain parts of the record and induced us to rely upon what the petitioner said and to base our decision on that phase of the
269 case.

The claim that the purchase of the 137 hectares from Mondragon was made simply to do away with him as claimant and owner is not supported by the terms of the document nor the facts and circumstances of the case. If that were so then the instrument was wholly immaterial and irrelevant as proof. Mondragon was not a party and he made no objection to the registration. The instrument meant nothing with regard to the opposition of Romana Gauzon.

We return the cases in order that they shall be tried again when the parties have been heard by the court and have had an opportunity to set forth their rights. We are nevertheless obliged to believe from what is disclosed by the record of the case, that the objector, by reason of the mistaken position taken by the petitioner,

has not had a proper and full opportunity to make her defense from her point of view.

The judgment rendered in this case is hereby set aside and annulled in all of its parts, and the case is returned to the Court of Land Registration for a new trial of the questions at issue between the parties, allowing them to make such amendments to their pleadings as may be necessary to do the parties full justice. They shall have the right allowed by section 505 of the Code of Civil Procedure.

So ordered.

(Sgd.) C. S. ARELLANO.
" FLORENTINO TORRES.
" E. FINLEY JOHNSON.
" A. C. CARSON.
" SHERMAN MORELAND.
" GRANT T. TRENT.

270 Filed in the Clerk's office this 29th day of March, 1912.

———, *Clerk.*

Heading and Title Omitted.

Supreme Court of the Philippine Islands.

Case No. 6995.

April 10, 1912.

This court having duly acquired jurisdiction in the above-entitled case which has been submitted by both parties for its decision, and after consideration by the court and an inspection of the record, the decision and order of judgment having been registered on the 29th day of March, 1912.

By virtue of said order the judgment rendered in said proceedings is set aside and annulled in all of its parts. The case is returned to the Court of Land Registration for a new trial of the questions at issue between the parties. The parties shall be allowed to amend their pleadings as may be necessary in order to do them full justice. The latter shall have the rights conferred by section 505 of the Code of Civil Procedure.

(Sgd.) J. E. BLANCO.
Clerk of the Supreme Court
of the Philippine Islands.

271 Heading and Title Omitted.

Court of Land Registration.

Case No. 6303.

Notification of the Judgment of the Supreme Court.

To Messrs. Hausserman, Cohn & Fisher, Attorneys for the Petitioner, No. 9 Plaza de Cervantes, Manila, P. I., and A. P. Seva, Attorney for the Objector, in Bacolod, Occidental Negros, P. I., Greeting:

In compliance with the provisions of section 507 of Act No. 190 you are hereby notified that there was received in this court and attached to the record in the above-entitled case, a copy of the judgment rendered therein by the Supreme Court of these Islands on April 10, 1912, which declares the judgment rendered in this case to be null and void in all its parts and orders the return of the case to this court for a new trial of the questions at issue between the parties and allowing them to amend their pleadings in such manner as may be necessary in order to do them full justice. The parties shall have the right conferred by section 505 of the Code of Civil Procedure.

Manila, April 25, 1912.

(Sgd.) RALPH E. McFIE,
Clerk of the Court.

(Here follows notice of service of copy).

272 Heading and Title Omitted.

Case No. 6303.

Order.

By virtue of the decision rendered by the Supreme Court in these proceedings, ordering a new trial therein, a new trial is hereby ordered and the parties shall be allowed to make such amendments to *of* their pleadings as they deem necessary; it will not be necessary to again present the evidence that has already been submitted and that is pertinent and admissible, but the parties may present additional proofs. The date and place for the new trial will be announced at the same time as the sessions are announced for this court in the Province of Occidental Negros.

So ordered.

Manila, P. I., April 30, 1912.

(Sgd.) NORBERTO ROMUALDEZ,
Auxiliary Judge.

(Here follow certificate of clerk and notice of service of copy).

Heading and Title Omitted.

Case No. 6303.

Comes now the petitioner through its undersigned attorneys and to the court sets forth:

273 That in compliance with the agreement entered into between the objector in this case, the Director of Lands, and the petitioner, as set forth in the motion dated September 22, 1911, attached to the record of these proceedings, the undersigned asks that the attached new plan and technical description of the property referred to in the said proceedings, which plan has been prepared by the Bureau of Lands and was approved by the Director thereof on May 10, 1912, be substituted for the one which is attached to the record. We hereby state that parcels 3 and 4 in the new plan are not claimed by the petitioner.

As it is to the interest of the petitioner to terminate these proceedings as soon as practicable we hereby pray the court to fix the continuation of the hearing in this case at the earliest possible date.

Manila, P. I., August 22, 1912.

(Sgd.) HAUSSERMANN, COHN & FISHER,
By CHAS. C. COHN,
Attorneys for the Petitioner.

Let the plans and the report of the surveyor be filed in this court. Manila, August 30, 1912.

(Sgd.) R. ROMUALDEZ.
Auxiliary Judge.

(Here follows certificate of notary public).

274 Here follows corrected technical description in accordance with new survey made in December, 1911, of the hacienda San Jose).

(Here follows report of chief of Surveying Division of September 3, 1912, upon corrected survey and description).

Heading and Title Omitted.

Case No. 6303.

Amended Opposition.

Comes now the objector, Romana Gauzon, widow of Vega, by means of the undersigned attorney, and prays the honorable court to allow her to present the following amended opposition:

1st. That the objector opposes the application filed by the petitioner in so far as it refers to 465 hectares of land included in the plan of the petitioner, which 465 hectares and the improvements existing thereon

constitute the hacienda "San Jose" or "Subongcogon," situated in the municipality of San Carlos, Occidental Negros, Philippine Islands.

2nd. That the objector bases her opposition on the following facts:

275 (*a*) On the 27th day of September in the year 1905 the Compañía General de Tabacos de Filipinas commenced proceedings in the Court of First Instance of Occidental Negros, Philippine Islands, (Civil Case No. 85 in said court) against the objector, Doña Romana Gauzon, widow of Vega, to foreclose a mortgage on the hacienda "San Jose" or "Subongcogon."

(*b*) That by reason of the said complaint and at the instance of the plaintiff, Don Juan D. Pomar, a person proposed by the said plaintiff, was appointed receiver of the property of the therein defendant, among which property was included the hacienda "San Jose" or "Subongcogon," and said receiver, after furnishing the required bond and taking the oath of office entered upon his duties and took charge of the said property, among which property was the hacienda "San Jose" or "Subongcogon"; that the said Don Juan Pomar still performs the duties of such receiver.

(*c*) That by reason of the judgment entered in the said proceedings for the recovery of a mortgage credit, the sheriff of this province sold the said hacienda at public auction and the same was adjudicated to the Compañía General de Tabacos de Filipinas with the express condition that the defendant, that is to say, Doña Romana Gauzon, widow of Vega, should have the right to repurchase the property within the period of twelve (12) months, counted from the 12th day of September of the year 1906, the date of the said auction sale.

(*d*) That the Court of First Instance of this province did not authorize the receiver Juan D. Pomar to deliver the said
276 hacienda "San Jose" or "Subongcogon" to the Compañía General de Tabacos de Filipinas, nor to any representative of the said company, nor to any other person.

(*e*) That neither the provincial sheriff of Occidental Negros, nor any of his deputies, has turned over the said property to the Compañía General de Tabacos de Filipinas nor to any person in the name of the said company.

(*f*) That on the 12th day of March in the year 1907, by reason of a second suit (Civil Case No. 249 of the Court of the Tenth Judicial District) for the recovery of a sum of money, filed by this same Compañía General de Tabacos de Filipinas (petitioner herein), against Doña Romana Gauzon, (objector herein), and at the instance of the plaintiff, one of the deputies of the provincial sheriff of Occidental Negros levied an attachment upon the right which the objector herein had and still has to repurchase or redeem the hacienda "San Jose" or "Subongcogon."

(*g*) That on the 29th of August of the year 1907, the Court of First Instance of Occidental Negros, Philippine Islands, rendered judgment in the said case, the dispositive part of which is as follows:

"The court sentences Romana Gauzon to pay to the plaintiff *of*

sum of P7,838.62, with interest thereon at the rate of 10 per cent from the 12th day of September, 1905, until payment is made. To the payment of this sum and its interest, as well as that of the sum of P500 which is hereby adjudged to the plaintiff as costs,
277 there shall be applied the net profits of the sugar obtained from the attached cane of the defendant, and of the personal and movable property also attached at the Hacienda San Jose on account of this suit, and in case this should be insufficient, the necessary amount of the proceeds from the sale of the defendant's attached right of repurchase of said hacienda shall also be applied to the payment of this judgment, and the receiver is hereby ordered immediately to render an account of the sugar produced in said hacienda. The execution of this judgment, if it becomes final, shall not be ordered until that account be filed and approved by the court. Furthermore, by virtue of the attachment of the right of repurchase of the defendant on the Hacienda San Jose, the period of the repurchase is suspended until this judgment becomes final, such suspension to be understood as being effective from May 10 last."

(*h*) That after many efforts on the part of the then defendant, the objector herein, Doña Romana Gauzon, widow of Vega, the receiver Juan D. Pomar, with notable and wilful delay, filed with the Court of First Instance of this province an accounting of the sugar produced by the cane that was placed in his charge as a result of the proceedings for the recovery of a mortgage credit and which cane was attached in the second suit (for greater clearness we will henceforward call case No. 85 the first, and No. 249 the second) and on the 22nd of September of the year 1909 the Honorable Court of First Instance of the Province of Occidental Negros, Philip-
278 pine Islands, rendered judgment with regard to said accounting and from this judgment the said Juan D. Pomar appealed.

(*i*) That by an order of the Court of First Instance of Occidental Negros, dated November 27, 1911, the said preliminary attachment of the right of redemption was declared to have ceased to be effective and on the 6th of December of the same year the objector called upon the petitioner to render a detailed account, in writing and supported by vouchers, of all the rents and profits which the hacienda "San Jose" or "Subongcogon" had produced from the time that the petitioner took charge of the said hacienda and for a relation of all the expenses and taxes paid by said petitioner during the same period, in order that the objector might know what sum she would have to pay in order to make use of her right to repurchase the said property. That the herein petitioner received said demand, and a month from the date of the said demand having expired without the petitioner rendering the said account, the objector filed suit against the petitioner in the Court of First Instance of Occidental Negros on the 15th of January, 1912, praying that the said court order the petitioner to render the said account, and that the said suit is still pending in said court.

(*j*) That the objector is ready to make use of the right to repurchase the said hacienda as soon as she can find out the net amount which she has to pay in order to effect the said repurchase.

279 (*k*) That the objector has been informed, and believing her information to be correct she therefore alleges, that on the 2nd of February of the year 1910 and in the pueblo of Iloilo of the province of the same name, Don Manuel Lopez, as ex-provincial sheriff of Occidental Negros, executed in favor of the Compañía General de Tabacos de Filipinas a deed of final sale to the said hacienda "San Jose" or "Subongcogon."

(*l*) That said final sale made by the said Manuel Lopez, as ex-sheriff of the Province of Occidental Negros, Philippine Islands, is void and of no value, due to the fact that the objector still has the right to redeem the said property.

And with regard to the 137 hectares of land, also included in the plan attached to the record, situated and adjacent on the north to the 465 hectares of land which forms the hacienda "San Jose" or "Subongcogon," the objector objects to the granting of title thereto to the petitioner and bases her opposition upon the following facts:

1st. That said 137 hectares of land were acquired by the objector after she had been issued royal title to the 465 hectares of land which forms the hacienda "San Jose" or "Subongcogon."

2nd. That said 137 hectares of land were not included in the mortgage executed by the objector in favor of the petitioner, nor were they included by the sheriff in the auction sale of said
280 hacienda "San Jose" or "Subongcogon."

3rd. That Andres Mondragon and his pretended predecessors in interest were never at any time nor are they now owners of the said 137 hectares of land nor of any part of the same.

4th. That the only absolute owner of the 137 hectares of land is the objector, for the reason that she acquired them through clearing, breaking, and continuously cultivating the same for a long period of years.

For all of the foregoing the objector respectfully prays the court to deny the title applied for by the Compañía General de Tabacos de Filipinas to the said hacienda "San Jose" and its appurtenancies, the area of which hacienda is 465 hectares, on the grounds that the petitioner is not the absolute owner of the said hacienda, and that the court also deny the title applied for by the said company with regard to the 137 hectares of land adjacent to and situated on the north of the hacienda San Jose, which said 137 hectares of land are owned exclusively by the objector.

Bacolod, for Manila, December 28, 1912.

(Sgd.) A. P. SEVA,
Counsel for the Objector.

(Here follow oath of counsel, notary's certificate, and notice of service of copy, all duly certified to).

281 EXHIBIT NO. "Z-1" OF THE OBJECTOR.

UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of the Province of Occidental Negros, Tenth District.

I, Mariano Cuadra, Clerk of this Court, do hereby certify that I have examined the attached document, to-wit, order issued on July 31, 1912, in the civil cause No. 793, Romana Gauson vs. Compañia General de Tabacos de Filipinas, for an accounting.

And that I have compared the same with the original on file in my office, and that the same is a true and correct copy thereof.

In witness whereof I have hereunto signed my name and affixed the seal of this Court this 11th day of January, 1913.

(Sgd.) MARIANO CUADRA,
Clerk of the Court.

Heading and Title Omitted.

Case No. 793.

For an Accounting.

Order.

In view of the prayer of the parties in this case contained in the foregoing document,

The court orders the hearing of this case to be continued until such time as the parties ask for a hearing or until a final decision is entered in another case pending between the same parties in the Court of Land Registration with regard to the issue of title to the hacienda San Jose or Subongcogon.

Bacolod, Occidental Negros, July 31, 1912.

(Sgd.) ALBERT E. McCABE,
Judge of the Tenth Judicial District.

282 EXHIBIT Z-2 OF THE OBJECTOR.

Heading.

ROMANA GAUZON, Widow of Vega, Plaintiff,

versus

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Defendant.

Action for an Accounting.

Comes now the plaintiff, Romana Gauzon, widow of Vega, through her attorney, and as a cause of action sets forth:

1. That the defendant is a corporation organized and registered in accordance with the laws of the Philippine Islands, and that one of its branches is in Iloilo, province of the same name, Philippine Islands.

2. That the plaintiff is a resident of the municipality of Iloilo, Province of Iloilo, Philippine Islands.

3. That on the 12th of September of the year 1906 and as a result of an action for the recovery of a mortgage credit brought in this same court by the herein defendant against the herein plaintiff, there was sold and adjudicated to the defendant herein, represented by its branch in Iloilo, Philippine Islands, for the sum of sixty-four thousand three hundred twenty-six pesos and ninety-two centavos (P64,326.92) the hacienda "San Jose" or "Subongcogon," property of the plaintiff herein, situated

283 in the pueblo of San Carlos, Province of Occidental Negros, Philippine Islands, together with all of its appurtenancies; said property measures 465 hectares, 33 ares and 82 centares, is bounded on the north by government mountain land and the river Ando-on and on the other side of this river with lands of Roberto Masicampo; on the east the same river Ando-on and on the opposite side lands of the said Roberto Masicampo, government mangrove swamps, the river Gigalaman; and on the other side of this river lands applied for by Don Leon Vega and those of Don Victor Visitacion; on the south the sea; and on the west the said river Gigalaman and on the other side the lands of Don Victor Visitacion and government lands already referred to.

4. That at the time of making said sale the express condition was imposed that the plaintiff herein should have the right to redeem the above-described property and its appurtenancies within the period of twelve months counted from the 12th of September of the year 1906.

5. That as a result of another civil action (civil case No. 249 of the Court of First Instance of Occidental Negros) brought by the defendant herein against this plaintiff on the 12th of March of the year 1907 and in order to make the judgment effective in the case a preliminary attachment was issued upon, among other things,

the right of redemption which the herein plaintiff had and still has over the described property and its appurtenancies.

284 6. That by an order of the 27th of November, 1911, the Court of First Instance of Occidental Negros, Philippine Islands, declared that the said preliminary attachment of the right of redemption has ceased to have effect.

7. That on the 6th day of December, 1911, the plaintiff herein, through her attorney, called upon the defendant herein to furnish a detailed statement, in writing and supported by vouchers, of all the rents and profits which had been produced by the hacienda above described, with its appurtenancies, from the time that the said Compañia General de Tabacos de Filipinas took possession of the same; and for an account of all the expenses and taxes paid by the said company during the time it has held possession of the said property in order that the defendant might know what amount she would have to pay in order to make use of her right to repurchase the said property. A copy of this demand was furnished the provincial sheriff of Occidental Negros, Philippine Islands.

8. That the defendant is in receipt of the said demand, but in spite of the fact that more than a month has expired, he has not rendered the account above referred to and has refused and still refuses to render said accounting.

9. That the plaintiff is desirous of making use of the right of repurchase of the hacienda "San Jose" or "Subongcogon" and its appurtenancies above-mentoned as soon as she knows the net amount which she has to pay; and that this can only be known after the defendant renders and the court has finally passed

285 upon the accounts demanded.

For all of the foregoing the plaintiff prays the honorable court to render judgment ordering the defendant, the Compañía General de Tabacos de Filipinas, to render the accounting mentioned in paragraph 7 of this complaint; to assess the costs against the said company and allow the plaintiff any other remedy which his honor believes to be just and adequate to the merits of this action.

Bacolod, January 15, 1912.

(Sgd.) A. P. SEVA,
Attorney for the Plaintiff.

(Here follows certificate of clerk of court.)

286 EXHIBIT Z-3 OF THE OBJECTOR.

Heading and Title Omitted.

Comes now the defendant corporation, and in answer to the plaintiff's complaint sets forth:

1. That it denies each and all of the allegations of the complaint with the exception of those which are expressly admitted in this answer.

2. It admits the allegation of the 1st, 2nd and 3rd paragraphs of the complaint.

3. In special defense the defendant alleges:

That there is now pending in the Supreme Court of the Philippine Islands, under No. 6995 of the registry of said court, another action between the same parties and dealing with the same subject-matter as that of the present action.

For all of which the defendant prays the court to finally dismiss the complaint herein with the costs against against the plaintiff.

Iloilo, for Occidental Negros, January 31, 1912.

ARROYO & HORRILLENO,
(Sgd.) By J. M. ARROYO.

(Here follow various stamps.)

287 EXHIBIT Z-4 OF THE OBJECTOR.

Government of the Philippine Islands.

Executive Bureau.

Division of Archives, Manila.

Stamps, etc., folio 828. Doñ Romana Gauson y Catalbas. Lease of rural property to Don Lazaro Mota y Ayo. No. 145. In the city of Iloilo, May 11, 1897. Before me, Don Andres Pastor Santana, notary public by competition of this district, a resident in said pueblo, belonging to the territory of the Illustrous College of Manila, appeared: On the one hand Doña Romana Gaoson y Catalbas, widow of Don Leon Vega de Cano y Bermudez, 39 years of age, property owner, lately a resident of San Carlos, Western District of the Island of Negros, and now residing in this city, with personal cedula of the sixth class, No. 25,348, issued by the tax department of this city on this date; and on the other hand Don Lazaro Mota y Ayo, married, 31 years of age, also a laborer, lately residing in San Carlo and now in this capital, with the personal cedula of the same class, No. 25,349, issued by said department on the same date. They state that they are in full enjoyment and exercise of their civil rights, and having in my judgment the legal capacity necessary for the celebration of this contract, they freely and spontaneously execute a contract of lease under the following terms and conditions.

288 First. Doña Romana Gaoson, owner of the hacienda San Jose in Subangcogon, leases to Don Lazaro Mota said property, which is composed of 400 cavanes of land, equivalent to 400 hectares, situated in said Subangcogon, barrio of San Carlos, jurisdiction of Calatrava, Western District of the Island of Negros, bounded on the north by the river Andon; on the south and each by the beach and the River Gigalaman and on the west by lands of the state and other lands belonging to the lessor, with a 12 horse power steam

engine, and store houses for bagasse, milling, and the storage of sugar, and other requirements of the sugar cane, together with an estate dwelling house; for the period of six crops, the first one of which shall correspond to the year 1898-1899, that is to say, from June to June, because the said Mota will have to take over the hacienda in June next and make plantings for the following year so that the first crop that he gathers will be that indicated and the sixth crop will be finished in the month of June, 1904.

Second. The price of this lease will be P5,000.00, for each crop or annually from June to June; the lessee will pay $2,500.00 on account of the first crop when the hacienda is delivered to him in the month of June next and will complete the payment corresponding to the first crop by delivering the remaining P2,500.00 in the month of December of this same year; P5,000.00 at the close of the second crop, that is to say, the first of June of the year 1900 and so on successively, P5,000.00 in each one of the following years,
289 one, two, three, and four of the next century; payments will be made in this town, to the jurisdiction and domicile of which both contracting parties subject themselves, and the payments shall be made in coin current in this locality.

Third. The owner will deliver to the lessee on taking charge of the hacienda 90 carabaos, male and female, in good condition, 30 cattle, 32 wagons, tools and other effects under inventory.

Fourth. The lessee shall pay the proprietor P1,500.00 on taking charge of the hacienda as payment of the debts of the tenants on shares, which debts shall pass to him.

Fifth. The lessee shall pay the expenses occasioned by working the lands and milling and those occasioned by the conservation and preservation of the storeshouses, house, machinery, furnaces, sugar-boilers, carts and other tools, from the time he takes charge of them.

Sixth. If by reason of force majeure, such as a storm or some electric disturbance, a fire should occur or the said storehouses or house should be injured, the owner shall pay the cost of rerecting them, but if the fire is occasioned by any other cause, or through abandonment, the lessee shall pay for the reconstruction.

Seventh. At the termination of the contract the lessee obligates himself to replace or to pay to the owner the value of such animals as have died, been stolen, or rendered useless during the
290 time of the lease, as well as the carts, plows, and other tools and untensils which the lessee may have received under inventory.

Eighth. The owner shall be obliged to receive all the equipment and tools which at the end of the countract are found to be useful and serviceable and she also obligates herself to receive all the animals which are found to be not unfitted for work and to the whole number contained in the inventory.

Ninth. On delivery of the hacienda to the lessee, the owner will turn over to him and deliver all the plantings or fields of cane and the calanan which may be on the place according to the valuation of an expert appointed by each party, at the rate of P1.00 per picul

of sugar ground, and the expenses incurred shall be deducted until closed.

Tenth. The lessee obligates himself during the last year of the lease to turn over the fields or lands as the crops are taken off them in order that the owner may take charge of them and utilize them in such form as she deems convenient; and in any case the proprietor will give him any plantings and calanan which the lessee may have on hand at that time, that is to say, the first of June of the year 1904, on which date this contract shall be considered as terminated, according to their valuation in form and manner indicated in the preceding clause; and if the two experts do not agree another shall be selected by lot from the four best
291 harvesters of the locality.

Eleventh. Any differences or questions which may arise at the termination of the contract shall be submitted to amicable adjusters appointed by the parties.

Twelfth. All direct taxation imposed on the property by the state shall be paid by the owner.

Thirteenth. Both parties by common accord agree upon this city and the courts of the same where any proceedings arising out of the failure to comply with the terms of this contract shall be had, to which and they expressly renounce any other domicile or court.

Fourteenth. That in the event the owner should sell the property, she obligates herself to respect this contract and to alienate the property subject to this instrument in order that he purchaser shall continue in the same form and conditions as the owner.

Fifteenth. In the event of the unexpected death of the owner, this contract shall be respected by her heirs.

Don Lazaro Mota accepts this instrument in all of its parts, effects, and consequences, as being that which is covenanted and agreed upon. This instrument is executed under the foregoing terms and conditions and both parties obligate themselves to support the contract and abide by its terms in accordance with law.

They so agree and the following persons, known to the owner, both of full legal age, witness the instrument: Don Mariano Errea
292 y Callejas and Don Cesar Montorio Larrayos, of this neighborhood. And having been advised of their rights under the law to read this instrument for themselves I proceeded at their request to read the same in a loud voice and being conformable thereto they ratified the contents thereof and affixed their signatures at the same time approving the following interlinear corrections: San Jose en: the erasures: o; eight: sixth: nine: e: r: tro: e: moliese: descontan: and between the lines: fortuitous: which should be approved. For all of which, of the knowledge of profession and residence of Señor Mota, and that I also know the witnesses and that through them I have verified the identity of Doña Romana, I certify. Lazaro Mota, rubric. Romana Gaoson, widow of Vega, rubric, Mariano Errea, rubric. Cesar Montorio, rubric. Andres Pastor, rubric. On the margin there is a note which reads: On the said date and at the request of the lessee, Don Larazo Mota, I issued a first copy on stamped paper, first stamp No. 2,495, and three sheets

of tenth stamp Nos. 810 and 8,206 and following. I certify. Signed, Pastor.

I certify that the foregoing is a true copy of the original on file in this office, and I set my hand thereto and affix my seal in Manila this 11th day of September, 1912.

[SEAL.] (Sgd.) M. DE YRIARTE,
Second Assistant Executive Secretary.

293 EXHIBIT Z-5 OF THE OBJECTOR.

For the Lack of Proper Stamped Paper.

In the pueblo of Calatrava, Western District of the Island of Negros, on the 30th of August, 1897: Before me, Municipal Captain Don Gregorio L. Minganilla, and the witnesses whose names appear below, came as party of the first part, Doña Romana Guanson y Catalbas, widow of Don Leon Vega, of legal age, land owner, resident of San Carlos of this jurisdiction, with a personal cedula of the 6th class, No. 25,348, issued by the tax department of Iloilo on the 11th of May of this year; as party of the second part appeared Don Lazaro Mota y Ayo, married, of legal age, resident of San Carlos, with a personal cedula of the 6th class, No. 25,349, issued by the tax department of Iloilo on the 11th of May of this year: and stating that they are in the full enjoyment and exercise of their civil rights and having according to my judgment the legal capacity necessary to celebrate this present contract they freely and spontaneously execute this contract of lease under the following terms and conditions.

First. Doña Romana Gauson, owner and proprietor of the lands called the pastures (pastos) gives and delivers in lease to Don Lazaro Mota the said lands, the area of which in the judgment of the proprietor is 300 cavanes, according to the documents of title,
294 but for the purpose of avoiding disputes with regard to any difference as to the extent of these lands which she herein leases, it is understood that she only leases all the lands belonging to her under the name of the pastures which are situated in the barrio of San Carlos of this jurisdiction. The said lands are bounded on the north by the hacienda San Jose, on the south by the river Guidalaman, on the east by the same river and the hacienda San Jose, on the west the government mountain lands; together with the steam engine and boilers which are erected in the camarin of the hacienda San Jose, the expense of transporting the said machinery and mounting to the said lands to be at the cost of the lessor; the carts in excess of the number required for the hacienda San Jose and San Antonio that have been leased by the owner, as well as all the cattle that can be used for the work although it be not precisely this year of 1897; those which may be utilized for the year 1898, which shall be taken from the number of those the proprietor has in excess of

her requirements after having furnished the said haciendas and from the herd of cattle which the said lady possesses.

Second. For the period of seven crops, the first to be that corresponding to the year 1898 to 1899, the lessee to take charge of the said lands in the month of September of this year, and the seventh crop to terminate in June of the year 1905.

295 Third. The price of this lease shall be P1,000.00 for each crop or year, the lessee to pay the first year, that is to say, P1,000.00 in June of 1899, and so on successively every year on the same date, P1,000.00, until 1905, the expiration of this contract, in coin current in this city of Iloilo.

Fourth. The erection of storehouses, an estate dwelling house, workmen's houses and furnaces that the lessee deems necessary for the development of the said lands, shall be made at the expense of the lessee and at the expiration of the said lease they shall all become the property of the said lessor and the lessee shall have no claim upon her for any amount in the way of improvements.

Fifth. The corn which is at present planted on the land above mentioned shall be gathered by the owner and the lessee shall have no right to demand any part thereof; and the lessee shall take charge of the lands now planted with corn as soon as the crop has been gathered.

Sixth. On his part, the lessee relinquishes the right which according to the contract he has with the owner in the hacienda San Jose to keep a peso per picul of sugar of the portions or shares of the European tenants on shares in the cane which at the present time they have planted on the hacienda San Jose.

Seventh. The corn which is at the present time planted on the hacienda San Jose shall be divided in the following manner:

296 one fourth part for Doña Romana, one fourth part for Sr. Mota and two parts for the tenants on shares.

Eighth. Doña Romana may continue to live in the house that she now occupies as long as it suits her convenience and Sr. Mota shall only have the right to force her to leave in the event that Doña Romana tries to injure him.

Ninth. All differencies or questions which may arise before the termination of this contract shall be submitted to amicable adjusters appointed by the parties, and in case of disagreement by a third.

Tenth. In case the proprietor should sell the property, she obligates herself to respect this contract, and in alienating it she will refer to this contract in order that the purchaser will continue in the same form and under the same conditions as the proprietor.

Eleventh. And in the unexpected event of the death of the proprietor this contract will be equally respected by her heirs.

Twelfth. This contract will be converted into a public document whenever it suits the convenience of either of the parties, and this contract is drawn up with the foregoing conditions and terms and both parties obligate themselves to maintain it in force and vigor in the best way possible under the law.

Both parties accept this contract in all of its parts as being that which was covenanted and agreed upon.

297 Thus they agree; the execution of this document is witnessed by Don Mamerto Zurbita y Tabernilla and Don Severino Agravante y Admaymon, of legal age, residents of this locality, and Don Catalino Rendon y Rubio and Don Gregorio Caballero y Asigurado sign these presents as witnesses. I, the Capitan, acquainted them of their legal right to read the present document but as they renounced it I read it and they stated that they were agreeable thereto and all signed these presents in Calatrava on the date ut supra.

El Capitán Municipal.
(Sgd.) GREGORIO L. MENGANILLA.

ROMANA G. DE VEGA.
LAZARO MOTA.
MAMERTO ZURBITA.
SEVERINO AGRAVANTE.
GREGORIO CABALLERO.
CATALINO RENDON.

298 EXHIBIT Z-*b* OF THE PETITIONER.

(Here follows bill of exceptions of respondent on first appeal from Court of Land Registration to Supreme Court of Philippines (R. G. No. 6995) offered in evidence by the petitioner on the second trial as Exhibit Z-*b* and which is omitted for the reason that its entire contents appears in the record hereinbefore set forth.)

299 EXHIBIT Z-*c* OF THE PETITIONER.

In the Supreme Court of the Philippine Islands.

Case No. 6303.

COMPANÍA GENERAL DE TABACOS DE FILIPINAS, Petitioner and Appellee,

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ROMANA GAUZON, Widow of Vega, Objector and Appellant.

Brief of the Objector, Romana Gauzon, Widow of Vega.

Assignment of Errors.

First error. The court erred in declaring that the questions of whether or not the right of repurchase of the property, title to which is applied for in said court, exists or not; whether this right of repur-

chase has been attached or not; and whether or not this attachment has been released, are foreign to its jurisdiction.

Second error. The court erred in declaring that the only provisions of Act No. 190 of the Philippine Commission applicable to the sale of real property in foreclosure proceedings are those contained in sections 254 to 261 of the said act.

300 Third error. The court erred in declaring that the claim of the objector Doña Romana Gauzon to have her right of repurchase inscribed on the certificate of title is not supported by any law.

Fourth error. The court erred in declaring that the law in force does not allow the right of repurchase of property sold in foreclosure proceedings.

Fifth error. The court erred in declaring that for the only object pursued by the same (el fin único que el mismo persigue) it was not necessary to determine whether the 135 hectares, 42 ares and 83 centares of land in excess of the amount which appears in the royal title, originally belonged to Doña Romana Gauzon or to Andres Mondragon and his pretended predecessors in interest.

Sixth error. The court erred in not declaring the certificate of final sale executed by the ex-sheriff of this province in favor of this petitioner (Exhibit E of the petitioner) to be null and void.

Seventh error. The court erred in not declaring that the agreement contained in Exhibit D of the petitioner was binding upon the contracting parties.

Eighth error. The court erred in not finding that the hacienda San Jose was in custodia legis.

Ninth error. The court erred in not declaring that the objector has the option of repurchasing the hacienda San Jose that was sold at auction on September 12, 1906, within a period of four

301 months and two days counted from the date on which the preliminary attachment is released, which attachment was levied at the instance of the petitioner upon the said right of repurchase of the same.

Tenth error. The court erred in not granting the objector the new trial that she prayed for.

Relation of Facts.

In September of the year 1905 the petitioner, that is, the Compañía General de Tabacos de Filipinas, and Doña Romana Gauzon, widow of Vega, were plaintiff and defendant, respectively, in a civil suit, No. 85, which was commenced and tried in the Court of First Instance of Occidental Negros. This suit was brought in foreclosure of a mortgage on the property herein applied for. (Exhibit 1.) In the said litigation the Compañía General de Tabacos de Filipinas asked for the appointment of a receiver for the property of Romana Gauzon and for the position proposed Mr. Juan D. Pomar. The latter entered on the performance of his duties as such receiver and took charge of the property of Doña Romana Gauzon and especially of the hacienda "San Jose" or "Subongcogon," the object of the

present application. Pomar took the customary oath of office and furnished the usual bond. It should be noted that Pomar, who was appointed receiver on the 27th of September, 1905, continues to be such receiver, because he has not been relieved from that office. (Exhibits 2, 3, 4, and 5 of the objector.)

302 The said civil case No. 85 was decided in favor of the petitioner and, for the execution of the judgment, the sheriff sold the property that is the object of the present proceedings at public auction and the property was adjudicated to the then plaintiff and herein petitioner.

In Exhibit D of the petitioner, a document executed by the sheriff of this province on the 12th of September, 1905, in conformity with the provisions of section 463 of the Code of Civil Procedure in force, the said official set forth therein the following paragraph:

"That the said property shall be subject to the right of repurchase for the period of one year from this date in accordance with the provisions of law."

Neither the provincial sheriff nor any of his deputies have turned the hacienda San Jose over to the petitioner. Neither has the receiver Juan D. Pomar been authorized by the Court of First Instance that appointed him to turn over the said property to the Compañía General de Tabacos de Filipinas. (Exhibits 6 and 7 of the objector.)

On the 11th of March of the year 1907 the said Compañía General de Tabacos de Filipinas commenced a second suit against Doña Romana Gauzon to recover the sum of P11,093.62 which, according to the company, the defendant still owed it on the mortgage credit which was the object of civil case No. 85. This second action was numbered 249 in the same Court of First Instance of Occi-

303 dental Negros. In this action No. 249, the Compañía General de Tabacos de Filipinas applied for and obtained a writ of preliminary attachment which was levied upon the crop of sugar cane belonging to the defendant, the objector herein, on certain personal property, and on the right to repurchase which the defendant had in the hacienda San Jose, by virtue of law and the agreement contained in Exhibit B of the petitioner. (Exhibit 8.)

On the 12th of March of the year 1910 the Compañía General de Tabacos de Filipinas filed with the Court of Land Registration an application for title to the hacienda San Jose. From the said application we cite paragraph 4, which is as follows:

"4. I have acquired the said property by purchase at a public auction held on September 12, 1906, by virtue of an execution issued in a foreclosure proceeding commenced in the Court of First Instance of Occidental Negros by the petitioner against Doña Romana Gauzon y Catalbas, widow of Vega, the original owner of the property in question."

On the 6th of January of the present year, Doña Romana Gauzon filed a written opposition to the said application and also a verbal one which she promised to reduce to writing, as in effect she did on the 20th of January of the present year. In the first opposition the objector asked that the title applied for by the Compañía General de Tabacos de Filipinas be denied unless it should be granted with the

express reservation that the objector Doña Romana Gauzon
304 had the right to repurchase or to redeem the property within the period of four months and two days counted from the date on which the preliminary attachment of the said right was released, and that the court should declare as null and void the deed of final sale executed by Manuel Lopez, as ex-sheriff of the Province of Occidental Negros, on February 2, 1910. In the second opposition the objector asked that the court declare that the 137 hectares, 42 ares and 83 centares of land in excess over that which appears in the royal title originally belonged to Doña Romana Gauzon and not to Andres Mondragon and his pretended predecessors in interest.

On the 24th of February of the present year the Honorable Higinio Benitez, Judge of the Court of Land Registration, rendered a judgment overruling the oppositions of the objector Romana Gauzon and decreeing absolute title to the property in favor of the petitioner. On the same date, February 24 of the present year, the objector excepted to the said decision and asked for a new trial on the grounds that the evidence adduced at the hearing did not sufficiently justify the decision of the court and that the same was contrary to law. This motion was overruled on the same day to which ruling the objector duly excepted.

First Error.

The court erred in declaring that the questions of whether
305 or not the right of repurchase of the property, title to which is applied for in said court, exists or not; whether this right of repurchase has been attached or not; and whether or not this attachment has been released, are foreign to its jurisdiction.

The error we assign grows out of a paragraph contained in the judgment rendered by the Honorable Judge Benitez, which is as follows:

"The representation of Doña Romana Gauzon has presented evidence referring to certain civil actions had in the Court of First Instance of the Province of Occidental Negros between her and the petitioner, endeavoring to show that the right of repurchase was allowed her, that this right was attached, that this attachment has not been released, and that there still remains four months and two days within which she may repurchase the property after the release of the attachment. This court cannot and should not consider questions that are completely foreign to its jurisdiction. The Court of Land Registration has exclusive jurisdiction to hear all applications for the registration of title to lands, 'buildings or real rights in property situated in the Philippine Islands.' Its decisions should deal with these matters alone."

The right of the objector to repurchase the hacienda "San Jose" or "Subongcogon" was created by the sale of the said hacienda which took place as a result of civil action No. 85, brought by the petitioner against the objector in the Court of First Instance of this province.

306 The period allowed by law to redeem property sold by the sheriff is that of twelve months, counted from the date of the sale. This in the case in question, took place on the 12th of September, 1906, and the opposition of Doña Romana Gauzon was presented on the 6th of January, 1911. At first glance it would appear that the right of the objector had expired because much more than a year has transpired between the time of the sale of the hacienda and the date on which the opposition in this case was filed.

To clear up this doubt, to explain the reason why, in spite of the time which has elapsed, the objector still has the right to repurchase, we presented the evidence to which the trial court referred.

It was indispensable to prove that there had been a complaint or action to recover the mortgage credit (Case No. 85); that at the instance of the then plaintiff Juan D. Pomar was appointed receiver of the property of the then defendant; that the hacienda was sold to satisfy the amount of the judgment entered in the said case; that in the deed of sale of the said hacienda, executed by the sheriff of this province, it was stipulated that the defendant had the right to repurchase the property so sold; that, before the expiration of the time allowed for the repurchase of the said hacienda, the purchaser, plaintiff therein and now petitioner in these proceedings, as a result of the second civil action (case No. 249) brought by the said company against the same defendant, attached the right which
307 the objector held to repurchase the hacienda "San Jose" or "Subongcogon"—an attachment which is still in force.

In support of our claims we cite the mortgage resolution of April 10, 1900, and section 2 of Act No. 496, which are as follows:

"The right reserved to the vendor in a deed of sale of real property to redeem the property within a given period by delivering the price thereof to the purchaser is a real right, in accordance with the doctrine contained in No. 9 of section 107 of the Mortgage Law and article 1510 of the Civil Code.

"If in the said deed of sale the vendor and the vendee stipulate that the said period shall expire, and that the said real right shall consequently expire also, if the former fails to pay the rental of the property at the expiration of each annual period, the deed of sale will not itself alone be a sufficient title or reason for extending the corresponding entry or notation of the extinction of the real right growing out of something other than the expiration of the period stipulated for the exercise of this same right. R. H. No. 91, April 10, 1900; G. May 6, m. a.; C., L., t. 7 and R., t. 89, p. 491." (V. Repertorio de Jurisprudencia Civil IV, p. 378, ed. 1909.)

Section 2, Act No. 496:

"A court is hereby established to be called the 'Court of
308 Land Registration,' which shall have exclusive jurisdiction of all applications for the registration under this Act of title to land or buildings or an interest therein within the Philippine Islands, with power to hear and determine all questions arising upon such applications, and also have jurisdiction over such other questions as may come before it under this Act, subject, however, to the right of appeal, as hereinafter provided. The proceedings upon such appli-

cations shall be proceedings in rem against the land and the buildings and improvements thereon, and the decrees shall operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto."

These proofs then bear upon the right to repurchase the property for which the Campañía General de Tabacos de Filipinas seeks to obtain title. This right is a real right or interest over which the Court of Land Registration has jurisdiction, and in holding the contrary the court has fallen into the first error.

Second Error.

The court erred in declaring that the only provisions of Act No. 190 of the Philippine Commission applicable to the sale of real property in foreclosure proceedings are those contained in sections 254 to 261 of the said act.

The trial court says that the sole provisions applicable to sales of real property arising out of actions for the recovery of a mortgage credit are those contained in sections 254 to 261 of Act No. 190.

309 The question referred to in this error is of great importance to the objector because in part the right she claims depends upon it.

The Supreme Court in case No. 4794, Warner, Barnes & Co. vs. Roman and Cirilo Jaucian, 13 Phil. Rep., 4, has declared that the procedure in sales of real property in actions for the recovery of a mortgage credit is provided for in sections 256 to 261 "in relation" with sections 443 to 453 of the Code of Civil Procedure in force.

This decision we refer to save us the need of undertaking a long discussion with regard to the interpretation of section 257 of the Code of Civil Procedure and we pray the Honorable Supreme Court to declare that the trial court fell into the error above cited.

Third Error.

The court erred in declaring that the claim of the objector Doña Romana Gauzon to have her right of repurchase inscribed on the certificate of title is not supported by the law.

According to section 2 of Act No. 496 which we have transcribed above not only the owners of buildings and land but also all persons who have an "interest" in the same, the lessee, the usufructuary, the creditor, the co-heir, or any person who has any real right which

310 modifies or incumbers that of the petitioner, has the right to resort to the Court of Land Registration.

Doña Romana Gauzon claims the right to repurchase the property title to which is applied for by the Compañía General de Tabacos de Filipinas, and if the objector has this right she also has a right, under Act No. 496, to have set forth in the title granted the petitioner that the property is subject to the said right, and a finding to the contrary is an infraction of the law we have cited above and constitutes the third error.

Fourth Error.

The court erred in declaring that the law in force does not allow the right of repurchase of property sold in foreclosure proceedings.

The court a quo bases his findings on the decision rendered by the Honorable Supreme Court in the case of Warner, Barnes & Co. vs. Jaucian (13 Phil. Rep., 4) and says that it has been decided in the said decision:

"That the mortgage debtor can only redeem his mortgage property if he pays the debt together with interest and costs 'before' the sale is consummated so as to prevent the sale of his property at public auction."

We have read this decision several times and we are quite sure that neither directly nor indirectly is anything said therein which may be interpreted in the sense that the Supreme Court intended
311 to hold that the right to redeem property sold in foreclosure proceedings does not exist.

In that case two questions were discussed. Neither of them had any relation to the right of repurchase. The first was whether or not the mortgage debtor should be required to pay before proceeding to the sale of his property under a writ of execution: and the second, whether mortgaged property should be sold according to the price fixed in the mortgage instrument.

It is true that in the said decision section 456 of the Code of Civil Procedure is cited but this section refers to all auction sales, whether they be the result of an action for the recovery of a mortgage credit or whether the result of a personal debt: whether the sale is of personal property or real property: naturally a debtor, at any time before the sale of his property, can pay the debt and prevent the sale. But the payment of a debt in order to prevent the sale of one's property at auction is a very different thing from exercising the right of repurchasing property. Whether the sale can be prevented or not by paying the debt before or after the sale has nothing to do with the existence or non-existence of the right of repurchase. The decision of the Supreme Court in this case of Warner, Barnes & Co. vs. Jaucian deals with the manner in which the judgment debtor may "prevent" the sale of his property. An event is naturally "prevented" "before" it happens; after it has happened the only thing that remains is to "remedy" it. Whether this remedy, called
312 "right of repurchase," exists or not was not decided by the Supreme Court in the said proceedings against Jaucian. Thus in the case of the Compañía General de Tabacos de Filipinas vs. Romana Gauzon (13 Phil. Rep., 481), a decision that was rendered about three months afterwards, in incidentally touching upon this point, it was said: "Whether the law grants the right of repurchase in the foreclosure of a mortgage, quaere," words which it assuredly would not have employed if the question has been decided three months previously by the same court.

In the judgment referred to by the honorable trial court we find quite the opposite of his contention.

In the said decision (13 Phil. Rep., 9) we find the following paragraph: "The procedure followed in the sale of said property, which sale was confirmed by the order appealed from, is that provided by sections 256 to 261, in connection with sections 443 to 463, of the Code of Civil Procedure, which repealed the former Ley de Enjuiciamiento Civil, and, among others, the said articles 127 and 128 of the Mortgage Law."

It clearly follows from this decision that section 463 of the said code must be taken into account in selling mortgaged property when the sheriff makes out the deed of sale thereto.

In reality, the sheriff of this province has done nothing more than to hold a sale according to section 463 and to insert in the
313 deed of sale of the mortgaged property all the conditions enumerated in the said section, that is to say:

Sec. 463. Sale of Real Property and Certificate Thereof.—Upon a sale of real property, the purchaser shall be substituted, to, and acquire all the right, interest, title, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. The officer must give to the purchaser a certificate of sale containing:

1. A particular description of the real property sold;
2. The price paid for each distinct lot or parcel;
3. The whole price by him paid;
4. The date when the right of redemption expires.

When the judgment under which the sale has been made is made payable in a specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption must be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed by the officer in the office of the registrar of land titles of the province.

According to this the sheriff is obliged to set out in the certificate of sale of real property levied on whether in foreclosure proceedings or for recovery of personal credits executed by him the date on which the right of redemption of the property or properties will expire (paragraph 4 of section 463) and if he does not do this he fails to comply with the law.

The provisions of our Code of Civil Procedure (Act No. 190) referring to the procedure in foreclosure proceedings are almost identical with those of the California Code.

The Honorable Supreme Court of that State has repeatedly declared that property sold in a mortgage foreclosure proceeding
314 is subject to the right of repurchase.

"The purchaser at a sale under the judgment rendered in the foreclosure suit acquires the same interest in the property sold as does a purchaser in property sold under an ordinary money judgment. Upon the sale the purchaser acquires all the right, title, interest, and claim of the debtor thereto and only the right to redeem from this sale is left in the mortgagor. Duff vs. Randall, 116 Cal., 226, 230; 58 Am. St. Reps., 158; 48 Pac. Rep., 66; See Reynolds vs. London, etc., L. F. I. Co., 128 Cal., 16, 20; 79 Am. St. Rep., 17; 60 Pac. Rep., 467."

In the present case there is involved the question of equity, a

consideration, a relief which the law allows the debtor who, owing to circumstances, finds himself at the mercy of his creditor.

If this Honorable Supreme Court disregards the doctrine laid down by that of the State of California the consequence will be that the objector will be forever deprived of the property of her hacienda; on the other hand (if it does hold with the said court), the petitioner will be in no way prejudiced because it will receive the amount of its credit, together with interest, and the reimbursement of all the amounts allowed by law.

The decision which the Honorable Supreme Court has to render in this case will be one which will not only affect the present suitors, but the thousands and thousands of mortgage debtors in the
315 Philippine Islands and the hundreds of persons against whom judgments have undoubtedly been rendered in first instance in actions for recovery of mortgage credits.

It will be then a decision of great and transcendant importance for, as we have said, thousands or agriculturists and business men in this archipelago.

For the reasons set forth we pray the Honorable Supreme Court to declare that the trial court incurred in the error we have cited and that by the law in force in the Philippines there exists the right to repurchase property sold in foreclosure proceedings.

Fifth Error.

The court erred in declaring that for the only object pursued by the same (el fin único que el mismo persigue) it was not necessary to determine whether the 135 hectares, 42 ares and 83 centares of land in excess of the amount which appears in the royal title, originally belonged to Doña Romana Gauzon or to Andres Mondragon and his pretended predecessors in interest.

We lament the fact that we cannot grasp the whole of the meaning which the honorable trial court has intended to give to the phrase contained in his judgment "the only object pursued by the same." Possibly this error of the court bears some relation to and finds support in the first one we have pointed out and explained. If
316 the defining and declaring whether the incumbrance of the right of repurchase on property exists or not are not questions foreign to the jurisdiction of the Court of Land Registration, as we have shown in the first assignment of error, then needless to say the exclusive mission, "the only object" which the Court of Land Registration pursues or should pursue is not to grant absolute title or to flatly deny it. The "real rights and interests" are within its exclusive jurisdiction, exactly; and it decides them as being in rem.

The basis of the opposition of Doña Romana Gauzon is that she has the right to repurchase of the hacienda "San Jose" or "Subongcogon."

In its sworn declaration at the commencement of these proceedings the Compañía General de Tabacos de Filipinas sets forth that it acquired all of the property from its original owner Doña Romana Gauzon through foreclosure proceedings against her.

But during the hearing of the case it presented one lone witness and one sole document, claiming to prove that it acquired 137 hectares, 42 ares and 83 centares of the 602 hectares, 76 ares and 65 centares of land of which the said hacienda is composed by purchase from Andres Mondragon, who, in his turn, says that he purchased them from the original owners.

317 We believe that the evidence adduced by the objector shows without doubt that these 137 hectares of land belong to her and not to Mondragon.

Even though we disregard all the parol testimony submitted by the objector, there remains the letter of Andres Mondragon to Joaquin Sierra, the objector's attorney-in-fact, Exhibit 31, cited hereinafter, which will convince the honorable court that the said 137 hectares, 42 ares and 83 centares belong to the objector and that the said Mondragon knew it.

The letter referred to is as follows:

"SAN CARLOS, September 10, 1906.

"Mr. Joaquin Sierra, Iloilo.

"DEAR FRIEND: I was in Subongcogon Friday morning and went over nearly the whole of the hacienda and I am able to inform you that all of the cane, with the exception of a field of calanan (cane for seeding purposes) is on the right hand on entering the hacienda from the direction of the river, which is somewhat yellow, all the rest of the cane is so green that it is nearly black and it is very clean. I am sure that this year the hacienda will yield more thousands of sugar than last year.

"I think it would be well for you to come on the first boat and stay with me at the house.[1] The hacienda, without including

318 the lands belonging to me, contains much more than 465 hectares and the rest belongs to you people, but for that it would be well to put monuments at the boundaries of the hacienda, turning over only the hectares which you mortgaged to the company because as land will be lacking to complete the 465 hectares you are called on for the eviction or to complete the said number of hectares; afterwards any amount over the 465 is yours.

"I estimate that the excess over the 465 hectares will be sufficient for a hacienda of 3,000 piculs or more.

"Come soon without telling anybody of your purpose and do not tell anybody that I sent you this letter. Leave the cousin[1] in Iloilo; you will be absent for several days and I think that you will be able to gather up some things belonging to the hacienda which were not included in the attachment and which amount to quite a number.

"I beg you to tear this letter up as it would not be well for any body else to read it.

"Regards to the cousin[1] and to yourself.

"ANDRES.

(Sgd.)

"P. S.—Don Antonio Castro died suddenly in his house from heart failure; he was unable to confess himself or anything."

Foot-note.—[1]It is shown in the record that this cousin of Andres Mondragon was the objector, Romana Gauzon.

319 Says Mondragon in his letter: "I estimate that the excess over the 465 hectares will be sufficient for a hacienda of 3,000 piculs or more."

How much land is necessary to make a hacienda which will produce an annual crop of 3,000 piculs of sugar or more? This is the question which the Honorable Justices will ask on reading the paragraph we have cited.

It is well known, it is of judicial knowledge, it is even common sense and it is shown in all litigations with regard to haciendas in this province, and the same thing must occur in other parts, that when land is used for the production of a given crop (especially that of sugar cane in which the operations of harvesting one crop coincide with the time and season of the work of preparing the ground and planting the next) it is necessary that in order to regularly obtain an annual crop of approximately the same amount an area of land equal to that occupied by the crop of the former year must be left idle or fallow; to plant too much land one year would result in diminishing or completely wiping out that of the following year. It is equally well known that in order to equip a hacienda and to raise sugar cane thereon it is necessary to erect a building of usual capacity which will serve as a mill, another storehouse for fuel, another which as a general thing is used to store the sugar produced, another building in which are placed the carts and other work implements, another building for the residence of the person
320 occupying the property, and in addition a considerable number of smaller houses for the workmen, and a large extent of ground which is used for drying the bagasse which serves as fuel for the boiling of the juice of the cane. And apart from all this the land necessary for roads for communication with the interior of the property, for the transportation and carriage of its products.

Having fixed this basis and taking as a point of commencement that a picul of sugar weights approximately 63 kilos and that according to the Spanish edition of the Philippine census (Vol. 4, p. 328), the average number of kilos of sugar produced by a hectare of land in Occidental Negros is 3,188, or at the rate of about 50 piculs per hectare, we can take as a- irrefutable fact that in order to produce 3,000 piculs of sugar 60 hectares of land are needed, in addition to another 60 which, as we have said, it is necessary to allow to rest for the following crop, all of which makes a total of 120 hectares; to these we must add 15 or 20 hectares more which will be occupied by the buildings, drying grounds, and roads absolutely necessary on sugar plantations, without including in this calculation lands which are necessarily a loss as being unsuitable for the cultivation of sugar cane, such as the lowlands which are generally used for rice, the hollows and valleys subject to flooding by the torrents of rain water and other topographic irregularities which diminish the agricultural value of the land.

321 Mondragon, who is an agriculturist, must have made this same calculation when he assured Sierra that, aside from the 465 hectares included in the royal title, the objector owned sufficient land to make a hacienda of 3,000 or more piculs of sugar.

Now it does not seem strange why Mondragon's letter should contain this paragraph:

"I think it would be well for you to come on the first boat and stay with me at the house. The hacienda, without including the lands belonging to me, contains much more than 465 hectares and the rest belongs to you people, but for that it would be well to put monuments at the boundaries of the hacienda, turning over only the hectares which you mortgaged to the company because as land will be lacking to complete the 465 hectares you are called on for the eviction or to complete the said number of hectares; afterwards any amount over the 465 is yours."

But neither Sierra, nor the objector whom he represented, desired to conspire with Mondragon in order to defraud the petitioner company and diminish the guarantee which the objector had given it.

Andres Mondragon wished to profit by this honorable attitude which they had adopted, and he did so, going so far as to claim that he was the owner of exactly 137 hectares, which, after all is the area which (without specifying it exactly, alleging that at that moment he did not know exactly how much it was) he
322 claimed and pretended to have transferred to the petitioner company by means of Exhibit C.

If this Mondragon had been the owner of this number of hectares, would he have parted with them to the Tabacalera for the ridiculous amount of P1,200.00, as appears in the Exhibit C of the petitioner and with so many restrictions on the form of payment when it appears proven and uncontradicted in the record (see the testimony of Filomena Tabares) that the minimum price of a hectare of land on the part towards the mountains is P50.00 and consequently the 137 hectares that Mondragon claims have a value of not less than P8,000?

This only goes to show that the petitioner endeavored to insure proof of its ownership over the whole of the property, and as for the purpose he could count on neither the testimony nor the support of the objector, he sought elsewhere to supply this lack and found in Andres Mondragon material disposed to make "shady" transfers, not to apply any other qualification to what the creditor does in Exhibit 31 of the objector in relation with Exhibit C of the petitioner.

After this digression, allow us to say that if this Honorable Court declares that the objector has the right to redeem the property without making an express declaration upon the subject of who has the right of ownership over the 137 hectares, 42 ares and 83 centares of land, the petitioner will undoubtedly maintain,
323 after such declarations, that the objector can only redeem the 465 hectares, 33 ares and 82 centares of land which appear in the royal title.

For this reason it was necessary, pertinent and indispensable that the trial court should have decided this question—one which was duly submitted to it by the parties. The petitioner alleged at the hearing of the case that he derived his right over the 137 hectares, 42 ares and 83 centares of land from Andres Mondragon; and the

objector maintained that it was from her that the Compañía General de Tabacos de Filipinas derived this right. Proofs were presented by both parties in support of their contentions and nothing could be more just, more logical or more legal than that the court should have resolved the question submitted, and in not doing so it incurred the error which we assign.

Still more, it has been proven by an enormous preponderance of evidence that the pretended predecessors in interest of Andres Mondragon were all tenants on shares, foremen and day laborers of the objector, and therefore could not transmit rights of ownership which they did not possess.

For these reasons the objector prays the Honorable Court to declare that the petitioner derived its rights in the 137 hectares, 42 ares and 83 centares from Doña Romana Gauzon and not from Andres Mondragon.

324 Sixth Error.

The court erred in not declaring the certificate of final sale executed by the ex-sheriff of this province in favor of this petitioner (Exhibit E of the petitioner) to be null and void.

The sheriff can only make out the certificate of final sale when the time for the exercise of the right of repurchase has expired.

The ex-sheriff of this province, Manuel Lopez, who executed in favor of the petitioner the certificate (Exhibit E) of final sale of the hacienda "San Jose" or "Sulongeogon" knew that he, at the instance of the petitioner itself, by means of one of his deputies, attached the right of repurchase which the objector had in the said property. Both the ex-sheriff Manuel Lopez and the petitioner knew that so long as this right was attached the objector could not make use of it; yet nevertheless the petitioner asked for and the ex-sheriff Manuel Lopez issued in its favor the said certificate Exhibit E of the petitioner, instrument which is void and which ought to have been so declared by the Honorable Judge of the Court of Land Registration.

The objector complied, alleging the nullity of the certificate referred to both in her written opposition and on its presentation as proof by the petitioner, but the trial court made no finding whatever upon this question.

In a decision of December 7, 1885, the Supreme Court of Spain declared:

325 "Although it is proved that when the action is based on the nullity of an act or obligation, the said declaration must be previously asked for; but this must be understood as referring to the plaintiff and not to the defendant who complies and so appears as excepting to the nullity of the document and its consequences."

That in proceedings to secure title the petitioner has the character of plaintiff, and that all persons whose interests are opposed to his are defendants, is so well known that we will not dwell upon it.

For the reasons above cited we respectfully pray the Supreme Court to declare that the said instrument Exhibit E of the petitioner

is null and void and that it declare that the court a quo incurred error in not so finding.

Seventh Error.

The court erred in not declaring that the agreement contained in Exhibit D of the petitioner was binding upon the contracting parties.

It is a well known principal of law that sales made by the sheriff are and must be considered as though they were made by the debtor himself.

In the certificate made out by the sheriff of this province on September 12, 1906, whereby he adjudicated the hacienda "San Jose" or "Subongcogon" to the petitioner herein (Exhibit D), the following stipulation was made:

326 "Said properties are subject to the right of repurchase for the period of one year from this date in accordance with the provisions of law."

This is a lawful consideration that is neither contrary to law, to morals, or to public policy; a plain condition that was agreed to by the parties with full knowledge of what they were undertaking.

This instrument (Exhibit D) has not been attacked by the petitioner as void; furthermore, it was presented by the petitioner as proof and the latter is therefore obliged to respect and stand by the consequences of its own evidence.

This instrument constitutes a juridical act, and so long as it is not declared to be void or of no effect it binds the contracting parties.

We must call the attention of this Honorable Supreme Court to the fact that neither the trial judge nor any other of the same category has made any finding whatever on the subject of the validity or the nullity of the said instrument; on the other hand, it was the subject of consideration by this Honorable Court in the decision written by the Honorable Chief Justice (Civil Case No. 4502, 13 Phil. Rep., 481):

"Whether it (the right to repurchase) should not legally exist and whether it was not created, are questions to be decided by the court only; but we have to do with a juridical act which, so long as it is not declared null and void, as such a juridical act serves for something and, with respect to the parties who have

327 executed it and consented thereto, is of course efficient and binding in its effects and consequences."

Such is the present condition of the property of the hacienda to which title has been applied for by the Compañía General de Tabacos de Filipinas. There is in existance a contract, a public instrument, valid and enforcible, wherein it was agreed that the objector should have the right, for the period of one year, to repurchase her property that was sold at auction on the 12th of September, 1906. In justice, the petitioner cannot deny this right to the objector and this Honorable Supreme Court, in justice and in equity, will not allow her to be deprived of it and will declare at the same time that the court a quo incurred in this error which we assign.

Eighth Error.

The court erred in not finding that the hacienda San Jose was in custodia legis.

It has been proven by means of Exhibits 2, 3, 4, 5 of the objector that Juan D. Pomar was appointed receiver of the property of the objector from the 27 of September of the year 1905, and that up to the time that Exhibit 5 was issued he still continued in the discharge of the duties of said office.

It has also been proven by Exhibit 6 of the objector that the receiver Juan D. Pomar was never authorized by the Court
328 of First Instance that appointed him, nor by any other tribunal, to turn over to the herein petitioner, or to any other person in representation thereof, the hacienda "San Jose" or "Subongcogon" which as such receiver he held in his possession.

Section 180 of the Code of Civil Procedure in force clearly says that property which a receiver may have in his possession shall be turned over to the person or persons who have the right to receive them "according to the orders of the court" which has appointed the receiver or that which takes the place of the same.

It is well known that the possession of the receiver is the possession of the court, and so long as the latter has not ordered the former to turn over the hacienda, then, in accordance with section 180 above cited, the sugar plantation known as the "San Jose" or "Subongcogon" hacienda should be considered to be in custodia legis, and in not so finding the trial court incurred in the error we have assigned.

Ninth Error.

The court erred in not declaring that the objector has the option of repurchasing the hacienda San Jose that was sold at auction on September 12, 1906, within a period of four months and two days counted from the date on which the preliminary attachment is released, which attachment was levied at the instance of the petitioner upon the said right of repurchase of the same.

329 The record shows by the evidence submitted by the objector and uncontradicted by the petitioner (see Exhibits of the objector Nos. 1, 8, and 19 and Exhibit D of the petitioner) that on September 12, 1906, in the pueblo of Bacolod, Province of Occidental Negros, Philippine Islands, and by the sheriff of the said province, this sugar hacienda known as the "San Jose" or "Subongcogon," owned by the objector Doña Romana Ganzon, widow of Vega, was sold at public auction and adjudicated to Manuel Couto in the name and representation of the Compañía General de Tabacos de Filipinas. In the instrument executed by the sheriff and accepted by the purchaser the following condition was set out: "That said properties are subject to the right of repurchase for the period of one year from this date in accordance with the provisions of law."

On the 11th of March of the year 1907 (Exhibit 8 of the objector)

the same Compañía General de Tabacos de Filipinas, as the result of another case (249) brought against Doña Romana Ganzon, widow of Vega, levied a preliminary attachment on the right of repurchase which the objector had over the so frequently referred-to hacienda "San Jose" or "Subongcogon."

That during the month of August of the year 1907, the objector herein, then the defendant in civil case No. 249 in the Court of First Instance of Occidental Negros, Philippine Islands, prayed said court to release the attachment levied upon the right which she had and still has to repurchase the hacienda "San Jose" or
330 "Subongcogon," with the object of exercising this right, and alleging the existence of a sufficient quantity of other property, also attached, to answer for the amount of the demand. This motion was overruled by the court as is shown by Exhibit No. 20 of the said objector.

That up to the time of the hearing of these proceedings the preliminary attachment levied at the instance of the petitioner in civil case 249 on the right of repurchase (Exhibit 29) of the objector had not been released.

We therefore have the deed of sale executed by the sheriff of this province (Exhibit D), which is a juridical act, by which the contracting parties stipulated that the property sold was subject to the right of repurchase in favor of the objector herein.

This instrument was presented in evidence by petitioner and neither the trial court, nor any other, has made any finding which annuls, modifies, or declares said instrument or any part thereof to be valueless.

In the decision rendered by this Honorable Supreme Court in civil case No. 4502, dated April 13, 1909, written by the Honorable Chief Justice, in dealing with the very right of repurchase that is herein questioned, the following was said:

"Whether it (the right to repurchase) should not legally exist and whether it was not created, are questions to be decided by the court only; but we have to do with a juridical act which,
331 so long as it is not declared null and void, as such a juridical act serves for something and, with respect to the parties who have executed it and consented thereto, is of course efficient and binding in its effects and consequences."

But the petitioner will undoubtedly contend that even supposing that the juridical act above mentioned exists and, consequently, the right of repurchase, the period within which the objector has the right to make use of it has transpired and for that reason the right of the objector has prescribed.

We have already said that it is proven in the record that, at the instance of the petitioner itself, the Court of First Instance issued an order by virtue of which this right of the objector to repurchase the hacienda "San Jose" or "Subongcogon" was attached—an attachment which still stands and which in spite of efforts made for the purpose the objector has been unable to have released or set aside. This being true, as it is, the petitioner can never say that the right of the objector has prescribed because the petitioner itself has pre-

vented its exercise and continues to prevent the objector from making use of this right.

In the same decision the Honorable Supreme Court in referring to the effects of the attachment of this same right of repurchase says:

332 "Considering that the attachment of a right implies an inhibition or privation of its exercise, and that, the right of redemption being attached, it could not be exercised during the period of attachment and while the litigation was pending. * * *"

Very plain are these words, words which determine all the questions here submitted, supported by the doctrine which we have just cited and that which we shall refer to later on.

And on the strength of these doctrines we contend, and shall always contend, that neither the whole of the time, nor any part of the time, during which the right of repurchase has been and continues to be attached, can or should be counted against the objector for the purpose of depriving her of the same and that the months which are still lacking to complete the year within which the objector may redeem the property should not begin to be counted except from the day on which the court sets aside the said preliminary attachment.

"(*b*) Prohibition to Sue by Paramount Authority.—General Rule —Wherever the plaintiff is prohibited from exercising his legal remedy by some paramount power, as by process of the courts or by direct or indirect legislation or by a mere condition of affairs which precludes his bringing his suit, the time during which he is thus prevented is not to be counted against him in determining whether the statute of limitations has barred his action, even though the statute makes no specific exception in his favor in such cases." (19 Am. & E. Cyc., 216).

333 The orders of the Court of First Instance by which the right of repurchase of the objector was attached and by which the release of the said attachment was denied, constitute process or writs which prevent the objector from making use of her attached right and as the doctrine above-cited well says, the time that this attachment lasts should not be counted against her in determining whether the said right has or has not prescribed.

There is an inhibition, there is an impediment; during the period of this attachment and litigation the objector can in no possible way make use of this right, and not being able to make use of it, it would not be just that the time during which this obstacle exists should count for the purposes of prescription. That the litigation which gave rise to the attachment is not yet concluded is sufficiently proven by means of Exhibit 28 of the objector, by which it is shown that execution has not yet been issued on the judgment rendered in said case. It also proven by Exhibit 21 of the objector that, up to the date of the issue of the same, final inscription of the judgment in case No. 85, the petition and other documents, judgment, orders and proceedings had in compliance with the order of the sale, the decree confirming it, the name of the purchaser and the description of the property bought, as provided for in section 261 of the Code of Civil Procedure, had not been made.

334 For the foregoing reasons the appellant respectfully prays the court to hold that the trial court incurred in the error we have assigned.

Tenth Error.

The court erred in not granting to the objector the new trial that she prayed for.

The court incurred in the error we have cited for the reason set forth in the other assignments.

Wherefore the objector and appellant prays the Honorable Supreme Court to reverse the judgment appealed from and to deny title applied for by the Compañía General de Tabacos de Filipinas, or if it grant to the petitioner title to the 602 hectares, 75 ares and 65 centares which are contained in the hacienda applied for, that it reserve to the said objector, on issuing the decree, the right to repurchase, not only the 465 hectares, 32 ares and 82 centares which prima facie belongs to her according to the royal title, but also the other 137 hectares, 42 ares and 83 centares which comprise the tract and to which, by an incredible obliquity of vision, the petitioner claims to derive title from Andres Mondragon; and that the period of four months and two days within which it should be exercised shall not again commence to run until the preliminary attachment levied upon the same has been released, an obstacle which prevents the objector from making use of her right as she is ready and has tried to do; declaring as null and void the certificate of final sale Exhibit
335 E of the petitioner executed by Manuel Lopez, ex-sheriff of this province, declaring also that the law in force allows the right to repurchase real property sold in foreclosure proceedings, and that it also make an express finding that the effects of a juridical act are obligatory on the contracting parties so long as it is not declared to be null and void or without effect, and such further findings as the Honorable Supreme Court consider equitable in accordance with the allegations contained in this brief and supported by the proofs adduced during the trial.

Respectfull submitted.

(Sgd.) A. P. SEVA,
Attorney for the Objector and Appellant.

Bacolod, for Manila, July 11, 1911.

336 EXHIBIT NO. Z-D OF THE PETITIONER.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 6995.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Applicant and Appellee,

versus

ROMANA GANZON, VIUDA DE VEGA, and THE DIRECTOR OF PUBLIC LANDS, Oppositors and Appellants.

Brief of Appellee.

This is an application for the registration of petitioner's title to a tract of land in the Municipality of San Carlos, Province of Negros Occidental. The petitioner derives its title from two independent sources, namely: (*a*) to the Hacienda San Jose from Romana Ganzon through the foreclosure of a mortgage upon the said hacienda and purchase at the mortgage sale; and (*b*) to so much of the land involved as is not within the limits of said hacienda de San Jose from Andres Mondragon, who has sold to the petitioner the title gained by the continuous possession of himself and his predecessors in interest.

A default was entered as against all of the world save and except Romana Ganzon, and the Director of Public Lands, and on
337 February 24, 1911, judgment was entered by the Court of Land Registration decreeing title to the petitioner. From this judgment Romana Ganzon appeals.

Opposition of Romana Ganzon.

Properly considered, Romana Ganzon does not oppose the registration of the title which is the subject matter of these proceedings. On the contrary, the opposition of said party is to the effect that said title be duly registered, but subject, however, to the alleged right of said Romana Ganzon to redeem and repurchase the said property. The sole question to be considered in this connection, therefore, is whether or not the alleged right of redemption now exists in favor of said Romana Ganzon.

The facts upon which this question is presented are in evidence, are wholly undisputed, and are as follows:

Prior to September, 1905, the Hacienda San Jose was the property of Romana Ganzon by virtue of a royal title issued in her favor, and was mortgaged in favor of the Compañia General de Tabacos de Filipinas. In said month and year, the mortgagee commenced an

action to foreclose this mortgage and in April, 1906, the foreclosure thereof was duly decreed, in the usual terms, allowing the mortgagor the legal term within which to pay the mortgage debt, and in default thereof, providing for sale of the property by the Sheriff.

In July, 1906, the amount decreed to be due upon the mortgage not having been paid, the property was duly ordered sold to satisfy the said amount.

338 In September, 1906, the property was sold at Sheriff's sale to the Compañia General de Tabacos as the highest bidder. When the certificate of said sale was issued by the Sheriff the same was made to recite that the property was sold subject to the right of redemption at any time within twelve months thereafter.

On March 12, 1907, the Compañia General de Tabacos commenced a further action against the mortgagor, Romana Ganzon, to recover the balance still due upon her debt, still remaining unsatisfied. In this action an order was issued for the attachment of the property of Romana Ganzon and by reason of this order an attachment was levied upon (*a*) the property of the defendant in and to the growing crop of cane upon the Hacienda San Jose; and (*b*) the property of the defendant in and to the right of redemption of the hacienda.

On May 7, 1907, the Compañia General de Tabacos made application in the foreclosure proceedings to have the growing crop included in the sale of the Hacienda, or, if excluded, to have the sale annulled. On September 3, 1907, the court denied this motion and confirmed the sale of the Hacienda San Jose.

On August 29, 1907, judgment was rendered in the second action awarding to the plaintiff company the sum of P8,338.62, payable firstly out of the proceeds of the growing crop above referred to, and secondly out of the right of redemption of the hacienda. In this judgment was included an order that the said right of redemption should be suspended from May 10, 1907, until the said judgment should become final.

339 An appeal from said judgment to the Supreme Court was duly prosecuted and the same was confirmed by said court on April 13, 1909. The judgment became final on May 13, 1909.

In August, 1909, further proceedings were had in the original foreclosure, in which an accounting by the receiver of the mortgaged property was made with reference to the growing crop hereinabove referred to, and in September, 1909, decision was rendered by said court of first instance in which it was decreed that the judgment rendered in favor of the plaintiff company in the other cause had been wholly satisfied by the payments which the receiver had made to said company out of the proceeds of said crop. From this judgment the receiver has appealed to the Supreme Court, but neither the plaintiff company, nor the defendant, Romana Ganzon, has appealed.

Upon the foregoing facts, it is most evident that no right to redeem the said hacienda from the foreclosure sale thereof now exists in favor of Romana Ganzon. The claim to said right of redemption, alleged on behalf of this oppositor, is based upon several distinct errors, each of which is fundamental and, when duly exposed, dis-

closes that the property in question belongs exclusively and absolutely to the petitioner, free of any right of redemption whatever.

I. The right of Redemption of Property Sold in Foreclosure of a Mortgage does not Exist in the Philippine Islands.

In September, 1905, when the mortgage debtor had failed to pay her debt as decreed by the judgment of the court, the property
340 was duly sold by the Sheriff of the province in accordance with said judgment. The petitioner was the purchaser at said sale and the sale was confirmed by the court on September 7th, 1907. By the sale and confirmation thereof the Hacienda San Jose became the absolute property of this purchaser at the foreclosure sale.

It is an established doctrine of law and of equity that the mortgagor's right of redemption is terminated by a judicial decree of foreclosure, and that, after foreclosure sale, the right to redeem the property does not exist unless expressly given by statute. (Parker vs. Dacres, 130 U. S., 43).

There is no statute in the Philippine Islands which gives to the mortgage debtor the right to redeem the property after the same has been subjected to foreclosure sale. On the contrary, the law provides (Sec. 256, C. C. P.) that the sale shall not take place until the following term of court, allowing the mortgage debtor the intervening time, within which to pay his debt and liberate his property and also provides (Sec. 257, C. C. P.) that the foreclosure sale, when confirmed by decree of the court, shall operate to "divest the rights of all of the parties to the action and to vest their rights in the purchaser."

Thus it is apparent that in the local law there is not only an absence of the necessary statutory provision for redemption after foreclosure sale, but also an express pronouncement of law which negatives the contention that all of the existing rights of a mortgage debtor are not divested by such sale, when confirmed.

341 Notwithstanding the foregoing provisions of the code, which ought to be conclusive, it will doubtless be contended on behalf of this oppositor that sales in foreclosure of mortgages stand upon the same footing as sales in execution of other judgments. It is indeed true that sales of property in execution of a judgment in an ordinary action leave the property subject to redemption by the judgment debtor. The foreclosure of a mortgage is, however, a special remedy and a radical difference will be found between the legal effect of a foreclosure sale and an execution sale in an ordinary action.

The law of the Philippine Islands relative to the foreclosure of mortgages is to be found in the Code of Civil Procedure (Secs. 254-261). This code is divided into various chapters of which Chapter IX treats of Special Remedies, and Chapter XIX treats of Final Process and Executions. Chapter IX, on the subject of Special Remedies, is subdivided into various classifications of which one is "Foreclosure," and this classification embraces the sections above cited (Secs. 254-261). As has been previously stated there is in these sections no provision whatever for the redemption of property sold in foreclosure of a mortgage.

Chapter XIX, on Final Process and Execution, provides:—

"Section 463. Upon a sale of real property, the purchaser shall be substituted to, and acquire, all the right, interest, title and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided."

342 "Section 464. Property sold subject to redemption as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, * * *."

"Section 465. The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale, on paying the purchaser the amount" etc., etc.

From the foregoing quotations it is noticeable that there are salient points of difference between the legal effects of foreclosure sales and execution sales. The most material of these points of difference are the following:

(*a*) In ordinary actions, the property of the judgment debtor is subject to execution and sale as soon as the judgment becomes final; in actions of foreclosure, the judgment debtor is always allowed until the succeeding term of court to pay his debt and liberate his property.

(*b*) In ordinary actions, the execution sale gives the purchaser all of the right, title and interest of the judgment debtor "subject to the right of redemption"; in foreclosure proceedings, the sale "shall operate to divest the rights of all of the parties to the action and to vest their rights in the purchaser" (not subject to any right of redemption nor any other reservation).

(*c*) Section 464 C. C. P. is expressly limited in its applica-

343 tion to such sales of property which are made subject to the right of redemption, thereby disclosing that all forced sales of property are not made subject to said right.

On the other hand, it will doubtless be pointed out, on behalf of the oppositor that Section 257 C. C. P., treating of foreclosure sales, provides that "* * * the court shall order the property to be sold in the manner and under the regulations that govern sales of real estate under execution." This provision, however, does not confer upon mortgage debtors the right of redemption which is expressly conferred upon judgment debtors in ordinary actions. On the contrary, it provides merely for the manner and regulation of the sale and does not pretend to define the legal effect of such sale. As already indicated the legal effects of foreclosure sales and of execution sales are definitely expressed in Articles 257 and 463 respectively, and are quite different and distinct. Article 257, after providing that foreclosure sales shall be conducted in the manner and under the regulations of execution sales, immediately, in the same section, provides that the effect of such sale, when confirmed, shall be to deprive the mortgage debtor of all his rights in the property and to vest the same in the purchaser at such sale. It is impossible that the law should provide in one sentence that the purchaser at foreclosure sale should receive only a conditional defeasible title to the property and in the next sentence that all of the rights of the former owner should vest in such purchaser.

344 In the many cases of foreclosure of mortgages which have been commenced and determined in these Islands it has never been successfully contended that the mortgage debtor has enjoyed the alleged right of redemption. The question has never been passed upon by the Supreme Court. In an appeal between the respective parties to this proceeding, concerning the selfsame property, the court has expressly declined to rule upon the question because not duly presented for decision in said appeal. (Compañía General de Tabacos vs. Ganzon, 13 P. R., 481.)

An exactly similar contention was before the Supreme Court of the United States in 1888. In the Territory of Washington (now State of Washington) the laws provided, just as the laws of the Philippines now provide, that a foreclosure sale should vest the title of the mortgage debtor in the purchaser of the property, and that an execution sale in ordinary actions left the judgment debtor the right to redeem. It was there contended, as here, that the mortgage debtor had the right to redeem the property after foreclosure sale. There, unfortunately, the Supreme Court also declined to express an opinion "whether the provisions relating to sales under execution, properly interpreted, gave a right of redemption after sale under a decree of foreclosure." (Parker vs. Dacres, 130 U. S., 43.)

An exactly similar contention arose in the early history of the State of California, and the Supreme Court of that State, in a brief and poorly considered opinion, held that the statutory right of
345 redemption is equally applicable to sales under foreclosure decrees in mortgage cases, as to sales under ordinary judgments at law. (Kent vs. Laffan, 2 Col, 595.)

Even in the State of California, however, where this ruling was made, it is openly conceded that the same is wholly erroneous. It has been followed and adhered to in that jurisdiction, not because it is a correct ruling, but because public policy requires uniformity.

"Whether this decision would be now made, were the question an open one, it is unnecessary to determine. It has been repeatedly recognized as law by this Court, and has been acted upon by the parties for years; rights of property have been acquired under it, which we are not at liberty at this day to disturb." (McMillan vs. Richards, 9 Cal. 412.)

"The decisions placing sales under decrees in mortgage cases and under executions on judgments at law upon the same footing was made as early as 1852, and has been adhered to ever since. It is very generally conceded by the profession that the decision was based upon an erroneous construction of the statute, but, admitting this to be true, it is too late to interfere with it; rights of property of vast value have grown up under the decision which no court is at liberty at this day to disturb." (Gross vs. Fowler, 21 Cal., 395.)

There are indeed potent reasons why the error once committed in California should be perpetuated there in order that vested property rights should not there be disturbed and upset.

346 There is, however, no reason in the world why an evident error of the California Court should be imported here and

fastened upon us. Like California, we shall never be able to remedy the error when once committed to it, but shall be compelled to adopt the lesser of two evils, and follow a wrong rule for the sake of security in property rights. It is highly important, therefore, that while our law is still in the formative period, and now that our jurisprudence is still silent upon the subject, we reject the error that California would, but cannot correct.

Not only is it true that the rule contended for by the oppositor is openly admitted to be erroneous in California where it prevails, but it is also possible by a priori reasoning to fully demonstrate this error. It is not practicable to here set forth this reasoning at length, based as it is upon a full consideration of the original nature of a mortgagee's estate; the changes evolved therein by the development of equity jurisprudence, and the resultant doctrine of judicial foreclosure and its effects as prescribed by modern statutes. The subject is admirably and splendidly handled, however, by the Hon. John Currey, whose argument is fully set forth in the reported decision of the case of McMillan vs. Richards, 9 Cal., 379.

For the foregoing reasons, it is respectfully submitted that the rule here contended for by the oppositor is wholly erroneous, and that there does not exist any right of redemption after foreclosure sale under the laws of the Philippine Islands.

347 Before leaving this subject, it will be well to anticipate and reply to a further contention that will doubtless be put forth in this case. The oppositor will here claim that because the certificate of sale issued by the Sheriff contained a specific recital that the mortgage debtor should enjoy the right of redemption for the period of one year, and because the petitioner as purchaser, accepted said certificate and permitted the same to be confirmed without protest on this score, the right of redemption in favor of the mortgage debtor has been created by estoppel, or by implied agreement.

But the right of redemption after foreclosure of a mortgage constitutes an equitable estate in the property, and requires for its creation and existence the formality and expressed intention that the grant of such an estate in real property always requires. As an illustration, there is a long line of decisions which expressly hold that where the right of redemption does not previously exist and is created by statute, such statutes cannot be lawfully made to apply retroactively so as to affect mortgages executed prior to their passage; such an attempt would be unconstitutional as the impairment of the obligation of contracts. (Banntz vs. Beverly, 163 U. S., 127; Haynes vs. Treadway, 133 Cal., 403; Savings Bank vs. Barrett, 126 Cal., 413; Benson vs. Bunting, 127 Cal., 532; 78 Am. St. Rep., 81.)

In Tuohy vs. Moore (133 Cal., 516) the plaintiff had foreclosed a mortgage upon a tract of land and had purchased the same at foreclosure sale. The sheriff issued a certificate of sale reciting

348 that the mortgage debtor was entitled to redeem the land within twelve months thereafter. This recital was in accordance with an amendment to the state statute extending the redemption period from six months to twelve months. This amendment

had been adopted after the signing of the mortgage but prior to its foreclosure. The plaintiff accepted the certificate of sale with this recital and the court confirmed the sale. As purchaser of the mortgaged property, plaintiff contended that the mortgage debtor had twelve months within which to redeem. The court held, however, that notwithstanding the recital in the certificate of sale, and notwithstanding the purchaser's acceptance of the same, the true and effective period of redemption in said case was that of six months only.

Where the statute itself fixes the time for redemption on foreclosure of a mortgage, the sheriff's certificate endorsed thereon, if it fixes an impossible time, will not destroy the validity of the foreclosure. (Reading vs. Waterman, 46 Wash., 107.)

The statement in a certificate of sale on foreclosure, as to the time for redemption, in no way affects the rights of either party as fixed by the law applicable to such sale; and the acceptance by the purchaser of such certificate stating the time to be different from what it is as applicable to that particular case, is not a waiver of his legal rights in any respect. (Carroll vs. Rossiter, 10 Minn., 174.)

In other words, the right of redemption and the time for its exercise must be created and fixed by statute, and cannot
349 be altered by sheriff, court, or legislature, without doing violence to the prohibition against impairing the obligation of a contract.

Nor is there any real force in the possible contention that the attachment in judicial proceedings of the alleged right of redemption, by the petitioner in this proceeding, is an acknowledgment of the existence of such right of redemption. We have already seen that the right of redemption is not created by estoppel, or implied assent, and, furthermore, alleged property rights are daily attached for what they may be worth, and such an attachment does not create a right which does not in law exist, nor estop the attaching party from denying its existence.

II. The right of redemption of this Hacienda, even if it ever existed, has long since expired.

If, for the purpose of this argument, it be wholly conceded that property sold in foreclosure of mortgages is subject to redemption on the same terms as property sold in execution of ordinary judgments at law, the period of redemption in the Philippine Islands would be that of twelve months. In the present case, this period of redemption would have commenced from the date of the sale (September 12, 1906) and would have expired on September 12, 1907. In any event, therefore, the alleged period of redemption of the Hacienda San Jose, if it ever existed at all, has expired by limitation a long time ago.

To this it will be replied that the period of redemption has been extended by order of the Court of First Instance, given
350 on August 29th, 1907. But there is no merit in this contention. It is true, indeed, that the Court of First Instance, in its judgment of that date, in an ordinary action of debt between the

parties, ordered that the running of the right to redeem the property from the foreclosure sale to which it has been subjected should be suspended as from May 10th, 1907, until said judgment should become final. But this order was and is null and void because beyond the jurisdiction of the court, and, furthermore, it has, by its very terms, expired.

(a) Nullity of the order of August 29, 1907.

Assuming, as we have premised, that the right of redemption of this property once existed, it must have been so by virtue of a law in force prior to the execution of the mortgage. The period of redemption fixed by law at the time the mortgage was signed was unalterable: it could neither be extended nor curtailed without impairing the obligation of the mortgage contract. It has been firmly established that the period of redemption, wherever it exists, is strictly regulated by the law in force at the time of the giving of the mortgage, and that any attempted alteration of the period thereafter constitutes the impairment of the obligations of the mortgage conract. The only possible law conferring the right of redemption of any property in the Philippine Islands fixed the period for such redemption at twelve months; if a mortgage debtor has the right to redeem his property from foreclosure sale at all, the period therefor is twelve months: it is either twelve months or nothing.

351 Neither the legislature, nor the sheriff, nor the court, nor any power in the land, can alter or change that period. It would make no material difference whatever whether the attempt to prolong the time for redemption took the form of a grant of an additional number of months, or the form of the suspension of the running of the period. Each would be objectionable as a variation of the contract between the parties. The order of the court, suspending the running of the alleged period of redemption was in excess of the powers of the court. It was utterly beyond the power and jurisdiction of the court to prescribe a rule for the government of the contract which the parties had made when no such rule was prescribed. Being beyond the jurisdiction of the court, it is null and void, and no rights can be predicated thereon.

Aside from the fact that the Court of First Instance was powerless to vary the terms of the contract between the parties in general, it is also notable that, in the action in which the order of August 29th, 1907, was made, the Court was palpably without jurisdiction over the subject matter of said order. Civil Cause No. 249, between the Compañía General de Tabacos de Filipinas, as plaintiff, and Romana Ganzon, as defendant, was decided by the Court of First Instance on August 29, 1907, and in the judgment of said action was included the order which is here under discussion. That action was commenced to recover a sum of money alleged to be due and owing from defendant to plaintiff, and therein an order had been made directed to the sheriff instructing the latter to attach and hold sufficient of the property of the defendant to satisfy the judgment

352 in favor of the plaintiff when given and made. On August 29th, 1907, judgment was duly given and made in favor of the defendant, and the same was directed to be satisfied out of the property

held by the Sheriff under the order of attachment. Thus far the judgment was lawful and proper, within the issues of the case, and within the powers and jurisdiction of the court. Beyond this, however, the court attempted to alter the nature and status of the property which the Sheriff was supposed to be holding under attachment, and this the court had no power whatsoever to do. Property brought into gremio legis by attachment proceedings is not under the jurisdiction of the attaching court in the sense that said court may arbitrarily and summarily adjudicate the rights of claimants thereto. Much less may the court, by its summary order, vary and alter, extend or curtail, the rights of respective claimants to said property. To emphasize this point it is only necessary to suppose that the right of redemption under attachment related to property of which a third person had been the purchaser. Clearly and indisputably the court could not have prejudiced the rights of such third person by extending or increasing this right of redemption. Nor was the power of the Court in this respect increased one iota by the fact that the plaintiff in the pending action happened to be the legal owner (by purchase at foreclosure) of the property to which the right of redemption applied. The court had jurisdiction over the parties and jurisdiction to adjudicate their respective rights in relation to the subject
353 matter of that action No. 249. The court had no power whatever to adjudicate concerning the respective rights of the parties in and to the Hacienda San Jose, which was by no means the subject matter of that action. The order purporting to extend the right of Romana Ganzon to redeem the Hacienda San Jose, given and made in Civil Cause No. 249 was and is null and void.

It has been sought, and will again be sought, to justify this order of August 29, 1907, on the ground of necessity; it will be pointed out by the attachment of the alleged right of redemption, the redemptioner was impeded from exercising the alleged right of redemption, and that the same was in imminent danger of becoming lost by expiration if the court had not intervened. Such reasoning is wholly specious, however. For in the first place, even if the alleged right of redemption was capable of being validly attached by the mortgagee, its attachment would not prevent its exercise, at least by the deposit of the redemption funds in the hands of the Sheriff or of the Court. And, in the second place, the laws does not confer the power upon a court to preserve rights which are about to expire by summarily extending those rights without jurisdiction over the subject matter. On the contrary, the statute (Art. 435 C. C. P.) provides that where attached property is perishable, or the interests of all of the parties to the action will be subserved by the sale thereof, the judge may order such property to be sold at public auction in such manner as he may direct, and the proceeds to be de-
354 posited in court to abide the judgment in the action. Therefore, if the alleged right of redemption was a thing of value, and that value was in danger of loss through the expiration of its legal term of exercise, it was within the province of the court to preserve that value by the sale of the right of redemption, substituting the proceeds of the sale for the right of redemption sold. But it

could not be within the province of the court, in an action which did not involve this right of redemption, and in which said right merely figured as an asset under attachment, to adjudicate between the parties interested in said right of redemption, and to extend said right in favor of the one and to the prejudice of the other.

(*b*) The alleged right of redemption has expired by the very terms of the order of August 29th, 1907.

Leaving aside, for the moment, the utter invalidity of the order of August 29, 1907, the indisputable facts of the case demonstrate that the alleged right of redemption can no longer exist even though the suspension of its running had been effectively accomplished. It will scarcely be contended by the oppositor that there is any period of redemption provided by law in these Islands other than that set forth in section 465 C. C. P., and limited therein to a period of twelve months. Hence they who contend in favor of the existence of such right of redemption must base their claim upon this provision of the code, or upon nothing at all. The right to which the oppositor now pretends, if it existed, must have been originally
355 limited to twelve months after the foreclosure sale. According to this limitation it would have expired therefore on September 12th, 1907. The order of August 29th, 1907, is relied on, however, to prevent its expiration. It therefore becomes material to consider the terms of that order to determine the time to which the expiration of the redemption period has been changed thereby.

The order provides that the running of the period should be deemed suspended as of May 10, 1907, and until that judgment (in case No. 249) should become final. On May 10th, 1907, the alleged period of redemption had necessarily elapsed to the extent of seven months and 28 days, leaving a remainder of four months and 2 days to run after the judgment of August 29, 1907, became final. That judgment was appealed to the Supreme Court, where it was affirmed on April 13, 1909, and became final thirty days thereafter. On September 15th, 1909, four months and two days after the said judgment became final, the right of redemption must have expired under the most favorable view that can by any possibility be taken of the mortgage debtor's rights.

Even if it be conceded, therefore, that the right of redeeming this property ever existed, and that the court could and did validly extend the period of its exercise, the period of redemption so extended has expired a year and four months ago.

And yet, in spite of these considerations, it has been disclosed at the hearing of this expediente that the oppositor puts forth the claim that the right to redeem still exists because the attachment thereof has never been dissolved, and therefore the mortgage
356 debtor has never enjoyed the opportunity to exercise this right. That no part of the contentions here made shall go unanswered, attention is respectfully called to the fact that there is no merit in this contention for no less than four independent reasons:

(*a*) In the first place, as has already been pointed out, the attachment of the right of redemption was no real impediment to the exercise of the right. The right of redemption is a right to be exercised

by the payment of a definite amount of money, and, whether the right was under attachment or not, the necessary sum might easily and readily have been deposited in the court, or even with the sheriff. It is wholly idle and specious, therefore, for the mortgage debtor to claim that she has been impeded from exercising her right by the existence of the attachment.

(*b*) In the second place, the period of time within which the right of redemption may be exercised is statutory and fixed. It is not subject to fluctuation or variation for any cause whatever, much less the convenience of the parties. The mere fact that the right of redemption was in dispute or under attachment will not change the nature and duration of the alleged right.

(*c*) In the third place, the very existence of the right of redemption, if its existence be granted, necessarily imports that it must have a definite duration and definite date of expiration. Otherwise there would never be any security of property rights in real estate acquired at foreclosure sale; no purchaser of any property that had ever figured in a mortgage sale could ever be assured of his rights unless
the period of redemption was definite, well established and
577 capable of exact ascertainment. The contention that the
mortgage debtor may redeem the foreclosed property at his leisure and convenience is untenable.

(*d*) And, finally, the evidence discloses that in September, 1909, the Court of First Instance decreed that the judgment in civil cause No. 249 (in which the attachment is supposed to subsist) has been wholly paid and satisfied by reason of the payments made to the judgment creditor by the receiver out of the proceeds of the sugar crop. As between the petitioner and the oppositor that judgment is final and conclusive, neither party having appealed therefrom. Ever since September, 1909, therefore, there has been no judgment to be secured by an attachment in said cause, and there has been no further attachment lien upon the alleged right of redemption, because the judgment to be secured by said attachment has been wholly paid and satisfied. If it be true that there has been no formal order entered of record expressly decreeing the dissolving of the attachment, it is because the judgment debtor has failed to ask for the same. With or without such an order, the attachment has long ceased to exist. There can be no attachment to secure the payment of a judgment which has already been fully paid and satisfied.

Even though it be wholly conceded therefore that the alleged right of redemption once existed, that it was validly extended by the order suspending its running, and that such suspension continued indefinitely until the dissolution of the attachment levied upon said right of redemption, the said right must, by all means, have expired
four months and two days after September, 1909, namely, in
578 January, 1910. For more than one year, at least, therefore,
the oppositor, Romana Ganzon, has not had the right of redemption which she seeks to enforce and leave endorsed upon the petitioner's certificate of title.

It is therefore respectfully submitted that the judgment of the

lower court so far as it concerns Romana Ganzon should be confirmed with the costs.

Manila, P. I., August 8, 1911.

HAUSSERMANN, COHN & FISHER,
Attorneys for Appellee.

359 UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Case No. 6303.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Applicant.

Minutes of a session of the Court of Land Registration, presided over by the Hon. Norberto Romualdez, Associate Judge of said Court, held in the City of Manila, P. I., on January 16, 1913, at 8:00 A. M.

The hearing in this case having been called at the time and place above stated, the following appearances were entered: Attorney Charles C. Cohn, for the applicant; Attorney A. P. Seva, for the opponent Romana Gauzon.

The attorney for the opponent presented as evidence the documents marked Exhibits "Z-1", "Z-2" and "Z-3", the same being admitted by the Court, without objection on the part of the attorney for the applicant.

The attorney for the opponent presented also as evidence the document marked Exhibit "Z-4", the same being admitted by the Court, with objection on the part of the attorney for the applicant.

After having been duly sworn according to law, the following-named witness testified:

On behalf of the opponent, Romana Gauzon y Catalbas, 52 years of age, widow, residing at Iloilo, Iloilo.

Mr. Seva introduced as evidence the document marked Exhibit "Z-5", which was admitted by the Court in so far — it may have any probative value, with objection on the part of the attorney for the applicant.

After having been duly sworn according to law, the following-named witness testified:

On behalf of the applicant, Ramon Lopez, 53 years of age, married, a farmer, residing at San Carlos, Negros Occidental.

The continuance of the hearing of this case was set for this afternoon at 2:30, by order of the Court.

Stenographic notes were taken by stenographer Percy G. Dwyre.

Attest:

(Sgd.) FRANCISCO GARCIA,
Deputy Clerk of the Court.

Approved:

(Sgd.) NORBERTO ROMUALDEZ,
Associate Judge.

COPY BOUND

360 UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Case No. 6303.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Applicant.

Minutes of a session of the Court of Land Registration, presided over by the Hon. Norberto Romualdez, Associate Judge of said Court, held in the City of Manila, P. I., on January 16, 1913, at 2:30 P. M.

The hearing in this case having been called at the time and place above stated, appeared: Attorney Charles C. Cohn, for the applicant; Attorney A. P. Seva, for the opponent Romana Ganzon.

Ramon Lopez was advised by the Court that he has to testify under his former oath taken in this case.

The attorney for the applicant presented as evidence the documents marked Exhibits "Z-A", "Z-B", "Z-C" and "Z-D", the same being admitted by the Court, without objection on the part of the attorney for the opponent.

The attorney for the petitioner with the consent of the Court stated that he would file a written brief in support of his contentions, the attorney for the opponent reserving the right to file an answer thereto. Both attorneys inform the Court that they had no further evidence to produce, and therefore rested their case.

Court reserved decision until after the briefs were filed.

Stenographic notes were taken by stenographer Percy G. Dwyre.

Attest:

(Sgd.) FRANCISCO GAMAO,
Deputy Clerk of the Court.

Approved:

(Sgd.) NORBERTO ROMUALDEZ,
Associate Judge.

361 UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Session of the Court of Land Registration, held in the City of Manila, P. I., on January 16, 1913, at 8:00 o'clock, A. M., presided over by Honorable Norberto Romualdez, Associate Judge of said court.

The court having been opened by the Deputy Sheriff of the City of Manila, Mr. Francisco Garcia, discharging the duties of Deputy Clerk and the undersigned those of stenographer, the following land case was called for hearing, to wit:

ND CLOSE IN CENTER

Case No. 6303.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Applicant.

Appearances:

Attorney Mr. Charles C. Cohn for the applicant, Compañia General de Tabacos de Filipinas.

Attorney A. P. Seva, assisted by R. Nolan, for the opponent, Romana Gauzon.

Mr. Cohn addressed the court in the following language:

This is a new trial of Expediente No. 6303, Compañia General de Tabacos de Filipinas, for the registration of a parcel of land known as the Hacienda de San Jose. The new trial is being held in obedience of an order of the Supreme Court of these Islands. In the former trial a decision was rendered, from which appeal
362 had been taken, decreeing registration in favor of the petitioner. The history of the expediente in brief is as follows: The Tabacalera filed a petition for the registration of this parcel of land and opposition was made by the Bureau of Lands, based upon the fact, that whereas the title papers show an area of 465 and a fraction hectares the petition sought to register 602 and a fraction hectares. The only other party participating in the expediente was Señora Romana Gauzon. Her intervention in the proceedings was not strictly an opposition to the registration of title, but was a special petition praying that in the registration of the title in favor of the Tabacalera there be indorsed a right to redeem the property. The redemption was a redemption from a sheriff's sale held in foreclosure proceedings in Occidental Negros, the hacienda having been mortgaged to the Tabacalera, and upon maturity of the mortgage a suit for foreclosure having been instituted in a competent court and a decree of foreclosure entered. The judgment not having been satisfied in the time prescribed by law the sheriff was authorized to sell the property at public auction, and the Tabacalera, the judgment creditor, was the purchaser at the sheriff's sale. A trial was had upon the issues thus disclosed and it was necessary, on account of the opposition of the Bureau of Lands to account for the discrepancy between the area as prayed for in the petition and the area disclosed by the title papers. Of course, it will be seen that the Tabacalera, as petitioner, as the successor to the rights of Doña Romana Gauzon, was interested in sustaining its title to the entire area, but was without the
363 necessary means for accounting for the discrepancy. Several persons who had been cultivating a portion of the area of the hacienda after the composition by the former Spanish Government, were claiming to be entitled to this area by reason of their continuous, open and notorious possession of the same as owners for the requisite legal period of time. These persons had made a cession of all their right, title and interest in these lands to one Andres Mondragon. And under the circumstances that will be explained to the court this morning, the Tabacalera has succeeded to the rights

of Andres Mondragon, that is, had purchased whatever right, title and interest Andres Mondragon may have had to these parcels of land so described. The purchase of the Andres Mondragon interest, however, were nothing more or less, (and never has been more or less) than the removal of a possible series of opposition on the part of his predecessors. It was what is known as a quit claim deed. The proof of that fact is to be found in the original petition, in which the petitioner, as required by law, states in the 4th paragraph of its petition that it has acquired said property "by purchase at public auction on September 12, 1906, by virtue of foreclosure proceedings brought in the Court of First Instance of Occidental Negros by the petitioner Da. Romana Gauzon y Catalbás widow of Vega, original owner of the property in question." That and that alone constitutes, as it then and now states, the origin of the title of the Tabacalera to this land. In the list of documents as set forth in the escritura, the document of quit claim, executed by Andres Mondragon, in favor of the Tabacalera,—this in order to
364 show that the Tabacalera not only had title derived from Romana Gauzon, but had acquired, by quit claim, any claim by outside parties. The decree was made in favor of the petitioner, decreeing the registration of the land in favor of the petitioner and denying the petition of Romana Gauzon to have entered upon the certificate a right to redeem the property. That right of redemption of the property was apparently based upon an error of the sheriff who included in his deed a statement to the effect that the mortgage debtor, under the law, had a period of one year within which to redeem the property. This court, in its decree, characterized that expression of the law as an erroneous one and held that Romana Gauzon had no right of redemption. From that decree there was an appeal taken to the Supreme Court, and the Government, that is the Bureau of Lands, contented itself with the decree and was satisfied and there was no further opposition from that source. Romana Gauzon, however, still insisted on appeal that she was entitled to the right of redemption. The Supreme Court has established the law of the case, by its decision of the appeal and has determined in positive and unmistakable terms that there never was and is not now any right of redemption. But in the Supreme Court there has been an entire misunderstanding of the issues in the case. The Supreme Court was under the impression, in rendering its decision, that there was an issue concerning certain lands outside of the mortgaged property and has held that as to the mortgaged property the Tabacalera has a complete title, but that there was an excess, another parcel on the outside, and the issue was
365 whether that property belonged to the Tabacalera or Romana Gauzon. That misinterpretation arises from the fact that whereas at the former hearing evidence was introduced, to overcome the Government's opposition by showing that certain parcels of land perhaps not originally included in the stated area of the composition title from the Spanish Government, had been actually cultivated and possessed for the requisite period of time by certain persons, which land, through Andres Mondragon, had finally passed

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into our hands. Romana Gauzon, in her proof had established, by the evidence, that these same persons were tenants of the Hacienda de San Jose and had cultivated the land, which was within the hacienda itself, as such tenants, rendering unto her the usual share of the crops produced by such land. From this evidence the Supreme Court gathered the impression that there was a question between the Tabacalera and Romana Gauzon as to whether these particular lands belonged to the Tabacalera or belonged to Romana Gauzon. In this the Supreme Court was entirely mistaken and I may take the liberty of calling it a mistake referring to it thus frankly, as it shows upon the face of the decision that the issues were wholly and entirely misunderstood. In that decision the Supreme Court quotes portions of the brief on appeal and says frankly that it is wholly unable to under-stand or make sense out of the statements contained in the proofs. Of course, the opposition of the Tabacalera was only this, that so far as its title was concerned it did not make any difference if Romana Gauzon was the original owner of these additional parcels of land, or if the persons who cultivated it were the owners. For if they had cultivated and
366 reclaimed this land on their own account it had come to the Tabacalera through Mondragon, while if they had cultivated it for Romana Gauzon and it was her land originally, it had become the Tabacalera's land through foreclosure of the mortgage. If on the other hand these persons had cultivated it on their own account, and not Romana Gauzon, it became the property of Andres Mondragon, and Mondragon deeded it to the Tabacalera. This is the portion of the argument which the Supreme Court says it is unable to understand. The decision, however, is as I have stated, that as to those lands the Supreme Court says that the cultivating and reclaiming of these parcels was by those persons as tenants of Romana Gauzon and the Tabacalera had not shown that it had acquired these lands through its deed from Andres Mondragon. The error was called to the attention of the Supreme Court by a petition for rehearing, filed on behalf of the Tabacalera. That petition was granted and as a result of it the Supreme Court for reasons best known to it-self, saw fit, instead of reconsidering the case and redetermining it upon the issues and the evidence thus presented, to send the case back for a new trial in this court. For these reasons the case is on trial this morning and under an amendment of the pleadings recently filed a day or two since, by Romana Gauzon, she now appears in this court, availing herself, as was to be expected, of the opportunity created by the decision made by the Supreme Court, in the role of a real oppositor. Of course, all the evidence that was taken at the former hearing of this case is a part of the
evidence of this case for all time, and it is no part of our
367 intention to reproduce that evidence. We do propose, however, to offer to the court evidence explaining what the real situation is and to enable the court to appreciate that the petitioner is the owner, absolutely, by virtue of the foreclosure judgment and sale, of all the land which is the subject of its petition, which is described in the official plan on file herein. In pursuance

of that intention we propose to show the following things: in the first place we propose to show that the plans on file, the descriptions governing them, describe the Hacienda de San Jose, what is now the hacienda and what has always been the hacienda, from the beginning right down to the present time. We propose to show that the area of 465 hectares as appears in the título de composición with the Spanish Government and from which there appears to be a discrepancy between the former area of the hacienda and the present area of the hacienda, indicating that that area has been increased in the meantime by the addition of new parcels of land, is only an apparent discrepancy. We propose to show that the Hacienda de San Jose has always had the same area, be that what it may, as it has at the present time. That there have been no additions nor substractions from it. We propose to show that the area of 465 hectares is now and always has been an erroneous statement of the area, either intentionally or unintentionally made. We propose to show just where that area comes from and how it originated. We propose to show, furthermore, that the persons whose transfers to Mondragon and whose rights, such as they might be, were in turn transferred by Mondragon to the Tabacalera, and who Romana Gauzon has since demonstrated were the tenants of the
368 hacienda and, therefore, acting on her behalf, cultivated and reclaimed lands, on the border line of the hacienda, both within its limits and outside of its limits. We propose to show that so much of the land as was within the limits of the hacienda when cultivated by these persons always has been and still is within the limits of the hacienda. We propose to show that so much of the land cultivated by these persons outside of the limits of the hacienda always has been and still is outside of the limits as described herein. We propose to show why and how the Tabacalera had any dealings whatsoever with Andres Mondragon. We propose to show that after having acquired title to the hacienda in the foreclosure proceedings and in preparation for the inscription of the hacienda under the Torrens Act, the boundaries of the hacienda were followed by a surveyor for the purpose of compiling and presenting suitable plans. We propose to show that in the act of making this survey the surveying party were intercepted on the north line of the hacienda by Andres Mondragon, who claimed that certain lands within the lines of the hacienda belonged to him by reason of the fact that the persons who had been in possession and who had cultivated those lands had sold and transferred their rights to him, Andres Mondragon. We propose to show that it was a well known fact to the Tabacalera that there was no real merit in this claim, that no person could have transferred a valid title to Andres Mondragon to any portion of the hacienda property, but we propose to show that the Tabacalera, deriving its title from Romana Gauzon, with whom they then were and for several years had been engaged in bitter litigation, could rely upon her for no voluntary assistance in the
369 establishment of their title to the lands claimed by Andres Mondragon. In other words, it would have been a matter of difficulty, and complication, for the Tabacalera, at that time, to

have made legal demonstration that the lands claimed by Andres Mondragon were indeed a part of the Hacienda. Furthermore, upon investigation it was discovered, by means of a letter which is already in evidence in this case, offered and introduced by Romana Gauzon herself, that Andres Mondragon availing himself of the statement in the título de composición, that the area of the hacienda was only 465 hectares, proposed a beautiful scheme with Romana Gauzon for defrauding the Tabacalera of all of the hacienda except 465 hectares, by means of the transfer, in his own name, of a sufficient portion of the hacienda to cut its area down to 465 hectares, and that by pretending that that excess was the property of Mondragon and was not a part of the hacienda. Such a proposal had been made by Mondragon to Romana Gauzon and the Tabacalera was not in a position to go to Mondragon or Romana Gauzon and ask them if they were engaged in a conspiracy to defraud the Tabacalera. It went to the public records to determine what was being done, and found what is also a part of the record herein,—it found a declaration of property by Romana Gauzon for taxation purposes, a declaration filed with the Treasurer of the province of Occidental Negros. It found that in describing her property in this tax assessment, on the 31st day of May, 1906, Romana Gauzon set out that
one of the boundary owners on the north side of the Hacienda
370 was Andres Mondragon, and it thus became plainly evident to the Tabacalera that they must do one of two things,—that they must either accept the terms of Andres Mondragon and purchase from him, give him money in exchange for whatever right title or interest he may have, or pretend to have, or, in lieu thereof, to assume the risk of losing that area through a conspiracy between Romana Gauzon and Andres Mondragon, whereby it would be possible for them to cause it to appear that these parcels claimed by Mondragon, although within the lines of the hacienda, were not a part of it. It was then impossible, of course, for the Tabacalera, without the assistance of Mondragon or Romana Gauzon to establish the real facts concerning the excessive area objected by the Bureau of Lands, the Tabacalera having nothing more to offer on its own behalf than the título de composición with its erroneous statement of area of 465 hectares. Hence, it is plain that the Tabacalera followed the wisest course and paid Andres Mondragon for his pretensions the sum of P1,200., of which as the record shows, P500 were paid in cash and the balance was reserved until the final decree of this court, in order to insure the further good faith of Andres Mondragon. That, and nothing more, is the explanation of the Mondragon deed—namely, the impossibility of successfully refuting the contention of Andres Mondragon, especially if, as appeared, his attitude was the result of a private understanding with Romana Gauzon, made in pursuance of his purpose contained in the letter which I have referred to and which appears in the record.

This, in general terms is the situation of the case so far as its
371 abstract condition, if I may term it so, is concerned. So far as the concrete issues are concerned there really are none. From a concrete and technical standpoint there are at the present

time no issues in this case and nothing which calls for the introduction of evidence or anything which permits the court to determine whether evidence introduced is relevant, material or competent. In fact the only evidence which can be introduced is evidence of a wholly explanatory nature. I think that there are no real issues in this case, because the only writing which appears on behalf of Romana Gauzon is that in which she states that of the parcel of land whose registration is solicited, she opposes the registration of 137 hectares. The plan is for one parcel of land which measures according to official survey and measurement, 602 hectares. She opposes registration of this parcel of land so far as 465 hectares are concerned on the ground that she has a right to redeem said land. Of course, this is just a representation of an imaginary right to redeem, which does not exist, as the Supreme Court has established as the law of the case. And she says as to the balance of the 137 hectares that she opposes it because she acquired this land subsequent to the acquisition of her composition title with the Spanish Government, and that the 137 hectares were never included in the mortgage in favor of the Tabacalera nor in the foreclosure sale held under that mortgage. This is a wholly specious and fictitious sort of an opposition. It is utterly impossible for your Honor to determine, or for the petitioner to determine, or for a sur-
372 veyor, expert, though he may be, to determine upon the plant or upon the ground what land the opponent claims as her own or what ground is subject matter of her opposition. This is especially so in view of the fact that our express contention is now and always has been that the parcel of land whose inscription is here sought in one single, sole parcel of land of the same size, shape and boundaries that it always has had, that it has never been added to or taken away from and that the title to the entire parcel is one and single, and for that reason it is absolutely impossible to make any discrimination whatsoever between this hectare of its surface and that hectare, and I submit that an opposition thus made to a parcel of land, based upon the vague and general grounds that the opponent is the owner of a portion of it, consisting of 137 hectares, without any attempt to define or locate the hectares referred to is a wholly specious fictitious opposition, which it is impossible, and therefore unnecessary, for the petitioner to meet.

Mr. Seva addressed the court in the following language:

May it please the court, after the lengthy statement of the learned counsel for the petitioner, it would seem that I would take much time in answering each and all of his statements, and indeed it would apparently be so were it not for the fact that the record of this case is self-explanatory. What the real history of the entire case is, the record itself shows. What position each party took from the start to the end of the case is also very apparent from the record itself. What the impression was that was conveyed by the attitude of each one of the parties upon the Supreme Court, is also
373 very clear and very forcibly set forth in the decision of the Supreme Court when remanding this case for trial. There

are, of course, a few remarks that cannot go without an answer. It seems to me that the issues in the present case are very definite, very clear, very concrete. No mistake is possible about them. As attorney for petitioner has very well stated, this is a case that originated formerly from foreclosure proceedings. For all I know, a party who holds a right of mortgage on property, after this property is foreclosed, acquires all of the rights and interest of the mortgage debtor upon the property included in the mortgage, except the right of redemption, and upon nothing else. To think otherwise would be to curtail the rights of the owner of a piece of land which might adjoin another parcel of land belonging to the same owner. One can very well fancy a party holding the right of ownership upon a tract of land which might be 1,000 hectares. This parcel might be divided, whether by natural boundaries or any other means, into 10 different smaller parcels. That party might want to raise money to a small amount; one or maybe two of the different parcels would be amply sufficient. It might not be necessary for the party to go and encumber the whole tract of land. Suppose that party decides to raise money and encumbers two of said ten parcels that make up the whole tract of land. The mortgage creditor starts foreclosure proceedings and is successful in the trial and the decision is given in his favor. A final deed is executed, conveying and transferring the two parcels which had been encumbered in favor of the creditor. Would it necessariily
374 mean that the 8 parcels remaining out of the 10 would have necessarily to pass into the hands of the mortgage creditor, simply due to the fact that the said 8 parcels happened to be adjoining the other two parcels? It would be hard to conceive that anyone would hold so. When we come to the point of deciding what rights the petitioner in this case acquired, and over what specific portion of land, the issue must be entirely determined by the express wording of the document itself. No other explanations are admissible. Petitioner in this case seems now to take an attitude entirely different from that it took at the first trial of this case. We have heard counsel state that Andres Mondragon deed- a quit-claim, that is that whatever rights Mondragon had on the piece of land, which it is contended he sold to the Tabacalera, were bought out by the petitioner so as to get rid of him. It is rather strange. Although, as a matter of fact, the petition of record, under No. 4, states only that the petitioner relies for its title on a sale at auction had on the 12th of September, 1905, by virtue of an execution on foreclosure proceedings of a mortgage, started in the Court of First Instance of Occidental Negros, by the petitioner against Romana Gauzon y Catalbas, widow of Vega, the former owner of the property in question, it is no less true that, as a document to support their alleged right of ownership to the land, the petitioner filed with its petition a document which is described in No. 4 of the list of documents attached, to-wit, a deed, although it is termed here a document of mortgage (and in this I concur with the attorney for the petitioner), a
375 document of sale executed by said Andres Mondragon, in favor of the petitioner. Does not your Honor believe that

if this document from Mondragon was intended to stop him from ever claiming any portion whatever of the land, the registration of which was being sought by petitioner, this document ought to have been kept by petitioner until Mondragon made any claim or opposition? Why should it accompany the petition, if it showed no title at all? If Mondragon was conveying no rights whatsoever, if their purpose was only to shut his mouth, what was the use in bringing it into the record? And then, the document from Mondragon speaks for itself. The wording of this document does not show that it is a quit-claim. The circumstances surrounding the entire affair do not concur in terming this document a quit-claim.

Something in connection with a conspiracy which might have been possible between the here opponent and Andres Mondragon has been mentioned or referred to by counsel for the petitioner. It is easy to see that no such conspiracy ever took place. We challenge any evidence to that end. On the contrary, all evidence tends to show that, after this proposal of Mondragon, which shows up the character of said Mondragon, the opponent never paid any heed, never went and worked together with Mondragon for the purpose of cheating or defrauding the petitioner, and it would possibly be good to call the attention of the court to the fact that such letter, which is the one transcribed into pages 14, 15 and part of 16 of the brief of the opponent under date of July the 11th, 1911, was not addressed to opponent in this case, but
376 to one Joaquin Sierra, and furthermore the record shows that the opponent was at the time in Iloilo. The letter was written from San Carlos by Mondragon and he wanted this man Sierra to come down to San Carlos and deliberately told him in the letter to leave his own, this is Mondragon's cousin in Iloilo. Mondragon's cousin has been shown in the record to be the opponent in this case.

In the present case, at first, and due to the attitude of the petitioner, the opponent was entirely misled. The vital point at the beginning was that she held that she had a right to redeem after foreclosure proceedings. It made no difference as to the adjoining land; if she had the right to redeem, she had that anyway. But now, considering things coolly, the opposition has been reproduced, and made clear, as said by the Supreme Court, to do justice to all concerned; and we still hold, as we held, that the opponent here has the right of redemption of the property which was formerly mortgaged and sold at foreclosure proceedings.

That as to the land which is covered by the Spanish grant or Título de Real. That as to the land which had been mortgaged by the opponent to the petitioner. It is almost common sense that she would have full right of ownership and not only a right of redemption on anything that had not been taken away from her.

As to the adjoining land, which now petitioner contends that it was, and is now, and always had been, a part of the hacienda "San Jose", the property mortgaged, the terms used by the Supreme

Court, in its decision on the appeal of this case from the
377 land court, are as clear as they can be. The opponent has clearly demonstrated, beyond any peradventure of doubt, that these would-be predecessors in right of the petitioner, that is, Mondragon and his would-be predecessors in right, which are those people from whom Mondragon claimed to have bought the land which he afterwards said that he was conveying to the petitioner, had no rights. The opponent, as I said before, clearly established that they were tenants, simply working under her, giving her a share as the owner of the land. Undoubtedly these portions of land which the petitioner claims, through Mondragon, were each and all of them outside of the farm, outside of the land covered by the Spanish grant, outside of the land mortgaged by the opponent to the petitioner.

There is one little remark that was made here which I am going to meet in a very short way. It is claimed that under a possible conspiracy between the opponent and Mondragon, the Tabacalera, the petitioner, was at the mercy of the opponent, in connivance with Mondragon, and had no means to prove ownership on the adjoining land. I do not see why that should be the case if Mondragon's predecessors in right had had public, open, quiet and peaceful possession of those parcels of land which Mondragon said he was conveying to the petitioner. It would have been a very easy matter for the petitioner to have found witnesses.

At this point of the proceedings a recess of ten minutes was allowed by the Court.

Address continued by Attorney Seva:

378 I no longer propose to dwell upon the matter relating to the Mondragon transfer. It was said before that the opposition is specious and fictitious. I frankly say that I must take exception from the definition given this opposition. I believe that the terms of the wording of the opposition are so plain, that the definition heretofore referred to is not at all warranted by the thing which it intended to define. We have filed the opposition, we can show on the ground, if necessary, where the land lies that we are opposing, and we contend that it never went away from our hands, that it never went into the hands of the petitioner. As a matter of fact we claim this adjoining lands as ours entirely, with the absolute right of ownership, for this adjoining 137 hectares of land, which are the same that the petitioner claimed at the beginning that it had acquired from Mondragon. As to the remaining land, which is described by metes and bounds, and area, in the Royal Title, our opposition is as to the right of redemption. We propose to show that the petitioner always knew the two lands to be different, always was on to the fact that the 137 hectares *were* land on the slope of the mountains, outside of the boundary limits of the hacienda "San Jose" property. We will have to show and introduce in evidence documents corroborating these statements. We will have to show that both the two places, the Hacienda "San Jose" and the adjoining 137 hectares of land which were always known by the denomination of "Los Pastos", was a tract of land which was for

the purpose of grazing cattle, which the opponent had at that time.

As I said, both the Hacienda "San Jose" and these "Pastos"
379 were rented out to the Tabacalera as two distinct parcels, one outside of the other; and when I say to the Tabacalera, I mean to say either to it personally or to its predecessors in right. That understanding of the distinction of the two parcels of land as one outside of the other is binding upon the petitioner and it must abide by it.

(By Attorney Cohn:)

In view of the fact that in sum and substance the contention of the opponent is now that all of the Hacienda de San Jose was not included in the mortgage nor in the foreclosure sale, unless the court expressly desires to hear the explanatory evidence I am content to submit the case for the present upon the evidence already adduced on behalf of the petitioner in this case, limiting myself to the right of introducing such evidence in rebuttal as may be required by the evidence of the opponent.

(By the Court to Attorney Seva:)

Q. Does the opponent claim there were two tracts of land, one Hacienda San Jose and one "Los Pastos"?

A. Yes.

Q. And that the Hacienda San Jose was entirely mortgaged in favor of the petitioner?

A. Yes.

Q. But that the other land was not included in the transfer to petitioner?

A. Yes.

380 Q. In that statement you mean to say that the petitioner included both tracts of land in the petition?

A. Yes.

(By the Court to Attorney Cohn:)

Q. The opponent claims fee simple to the land "Los Pastos"?

A. Yes.

Q. And the right of redemption on the land called Hacienda de San Jose?

A. Yes.

Q. Have you any evidence to intrduce?

A. No.

(By the Court to Attorney Seva:)

Q. Have you any evidence to introduce?

A. Yes. May it please the Court, I believe that it is sufficiently clear now what the issue is about. I believe that the Court has a thorough understanding that we claim as owners the lands, which is 137 some hectares and which is located on the slope of the mountains, between two rivers, which make the actual boundary of this land, all of which 137 hectares are adjoining to that described in the

Royal Decree. I believe that the court is familiar with the point at issue.

Now as to the evidence, I have approached counsel for the petitioner and tried, and to a certain extent, succeeded in having with him an agreement as to one fact and that is that the here opponent has filed a case in court against the petitioner in this case, in
381 the province of Occidental Negros, for the rendition of accounts which is a prerequisite of law to make use of the right of redemption, so as to ascertain how much we owe petitioner, and consequently how much we should pay said petitioner in order to redeem the land. The only objection which counsel stated to me he had is that he believes this evidence to be immaterial, but otherwise he has no objection.

(Court to Attorney Cohn:)

Q. Is that right?
A. Yes.

Attorney Seva continues:

The case I refer to is Case No. 793 of the Court of First Instance of the 10th Judicial District and was begun by the presentation of the complainant on the 15th day of January of the year 1912. In connection with that, I offer in evidence a certified copy, issued by the Clerk of said court, of an order of the Judge presiding over that court, granting a request filed by the attorneys of the parties litigant in that case, for the continuance of said case No. 793 until another case would be finally disposed of, which other case was pending between the same parties before the Court of Land Registration, referring to the registration of the Hacienda "San Jose".

(Court to Attorney Seva:)

Q. What is the point you wish to establish by that document?
A. The following: That we have not lost our right of redemption if it ever existed. That we have made an effort to be in a position to redeem from the petitioner the premises incum-
382 bered. We tried to comply with all requisites of law and one of them was to ask the petitioner for a rendition of accounts. The Court will please bear in mind the fact that no point in this present case has been firmly decided by any court so far, because the previous determinations and previous findings by both the Land Court and the Supreme Court have now been revoked by the action of the Supreme Court itself. We may very well contend that nothing has been said as to whether or not there is a right of redemption. That piece of evidence there is in support of our contention as to our right to redeem the land mortgaged, the hacienda "San Jose."

(The Court:) The document is admitted for that purpose, marked Exhibit "Z-1."

(Attorney Seva:) And in connection with that, of course, offering to replace them later on with certified copies if the court and the

petitioner, or either, require us to do, we would also offer a copy of the answer in said case No. 793.

(Mr. Cohn:) I have no objection.

(The Court:) Documents admitted and marked Exhibits "Z-2" and "Z-3."

(Attorney Seva:) I lack practice in this court and I desire to be informed as to whether or not we are required to file English translations of these pieces of evidence that are introduced on this trial. If so, I would pray for time to translate them into English.

(Attorney Cohn:) So far as I am concerned I have no objection.

383 (The Court:) The Court, in this case which was begun before the official language (English) was in force, does not require in this case the translation into English so far as the petitioner does not object.

(Attorney Seva:) I now offer in evidence a certified copy, from the Division of Archives, of a contract of lease of the land covered by what is called the Hacienda de San Jose. The said contract was entered into by the opponent in this case and by Don Lazaro Mota. The contract bears the date of May 11, 1897, and is a document properly executed before a notary public.

(Court to Attorney Cohn:)

Q. Any objection?

A. Objection on the grounds of it being immaterial and irrelevant.

(The Court:) Objection overruled, document admitted for what it is worth. Marked Exhibit "Z-4."

ROMANA GAUZON takes the stand and after being duly sworn, and in reply to certain questions by the Court, states that her name is Romana Gauzon y Catalbas, 52 years of age, a widow, residing in Iloilo, Iloilo, P. I.

Attorney Seva examines Romana Gauzon, witness for the opponent.

Q. Do you know Don Lazaro Mota?

A. Yes sir.

Q. Did you ever have any contract with him for a lease of land?

A. Yes sir.

384 Q. What land was it?

A. The first contract was a lease of the Hacienda de San Jose.

Q. And the second?

A. The second was a lease of the Los Pastos, which is going to be a hacienda.

Q. When you entered with him into that second contract did you have a written instrument, executed at the time?

A. Yes sir, a document.

Q. Showing you now this document, marked "Z-5", for identification, tell me if this is the document executed at that time.

A. Yes, this is the same one.

Q. Do you know the signatures appearing at the bottom of this document?

A. Yes, I know them all.

Q. Whose is the first signature?

A. Of the Captain Municipal.

Q. What was his name?

A. Gregorio Minganilla.

Q. Whose are the second and third signatures?

A. This is mine (pointing to the one to the left) and this is the signature of the lessor (pointing to the signature on the right), Lazaro Mota.

Q. And whose are the other remaining signatures?

A. Of the witnesses.

Q. Were you there when this Gregorio Minganilla signed his name to this document?

A. Yes sir, we have been present, all who signed this document.

385 Q. Did you see Lazaro Mota sign?

A. Yes, sir, I did.

Q. At that time?

A. At that same time.

Q. Although the document itself states that the erasure is valid have you any recollection as to when this correction, or erasure, was made on the fifth page of this document?

A. At the same time that the instrument was executed, in front of all.

(Attorney Seva:) I make a formal offer of that document as evidence.

(Attorney Cohn:) Objection, on the grounds of it being immaterial and irrelevant.

(The Court:) Objection overruled and admitted as Exhibit "Z-5."

(Attorney Cohn examines witness:)

Q. At the time you rented the land referred to in Exhibit "Z-5," were you the owner of it?

A. Yes, sir.

Q. How long had you been the owner?

A. Since the time that my husband was alive to the present time.

Q. Who was your husband?

A. Leon Vega.

Q. How did you become the owner of this land referred to in the Exhibit "Z-5"?

A. The smaller part from my husband and by breaking up the land.

386 Q. In 1897 how long had you been breaking up this land?

A. Since the year 94 until I left the Hacienda, which was in the year 1906. (Witness corrects her former testimony). Since 1884 up to 1896.

Q. This is the only title you had to any part of the land referred to in "Z-5", the fact that you had been plowing and cultivating it?

A. Yes.

Q. Then all of the land of which you were the owner was land cultivated and plowed by you?

A. Yes, sir.

Q. And all of the land leased by this Exhibit "Z-5" was land that had been in cultivation from 1884 to 1896?

A. Yes, sir, from the year 1884, which was the time we were beginning to break up the land, until 1896.

Q. Then the land that you leased by this document, "Z-5", was cultivated land, had been in cultivation for a period of over 12 years?

A. We have been cultivating it, not all of it.

Q. How did you become owner of that portion of it not under cultivation?

A. Having it cultivated by quiñones.

Q. In reply to a former question you stated that you became the owner of the property referred to in "Z-5", and all of it, by reason of the fact that you had plowed and cultivated it?

A. Yes.

387 Q. Now you have stated in reply to a former question that it was not all plowed and cultivated, but a portion only?

A. It was all cultivated when I left the hacienda.

Q. Was it all cultivated when you leased it to Sr. Mota in August, 1897?

A. Yes, it was already cultivated.

Q. You have stated in reply to a former question that the land leased by Exhibit "Z-5" was pasture lands which were about to be converted into a hacienda?

A. To make it a hacienda it is necessary to plow the land.

Q. That is the conditon of this land in Exhibit "Z-5"?

A. Yes, sir.

Q. At the former hearing of this case held on the 6th day of January, 1911, in the municipality of San Carlos, province of Occidental Negros, before the Honorable Higinio Benitez, a judge of this court, you were asked by your attorney, Sr. Seva, if for the purpose of obtaining a Royal Decree, your land was measured, to which you answered, "it was measured." Is that not correct?

A. Yes.

Q. Then you were asked who measured it and you answered "Don Eduardo Fuentes."

A. Yes.

Q. Then you were asked how it was measured, and you answered, "By calculation, it seems; they were more than one-half day measuring."

A. Yes.

388 Q. Then you were asked if a plan was made, and you answered, "yes, a plan was made and sent to me later."

A. Yes.

(Attorney Cohn:) It is admitted by the parties that the testi-

mony by Romanza Gauzon on the occasion in question upon the hearing of this case was, as is set forth in the stenographic notes in the record.

Presents plan marked Exhibit "Z-A."

Q. I hand you this plan marked "Z-A" and ask you to state if you know what it is.

Opposition offers motion to inspect document before presenting to witness. Motion overruled. The document shown to witness for identification.

Q. The question is, state if you know what this document is?
A. This is a plan made by the surveyor Eduardo Fuentez.
Q. Please state whether this is or is not the plan of the hacienda that accompanied the mortgage to the Tabacalera?
A. Yes, sir.

Plan presented to Attorney Seva for inspection.

Q. I hand you this map, Exhibit "Z-A," and ask you to point out on it where is the land "Los Pastos."
A. I do not know how to read a map or read a plan; I cannot answer you by looking at this plan. I can tell on the ground. The Pastos are on the slope of the mountain, adjoining a part.

(Attorney Cohn:) That is all.

(Witness dismissed).

(Attorney Seva:) We offer again all of the former evidence so far introduced in the case and especially call the attention of
389 the court to the certificate issued, marked Exhibit "F," by the register of property of the province of Occidental Negros, under No. 8 (folios Nos. 31, 32 and the beginning of 33 of the first pieza of this expediente), and with that we rest our case.
(The Court:) Q. Any evidence by the petitioners?

Petitioners call RAMON LOPEZ as a witness, who takes the stand, and after being sworn, in answer to questions by the court, states as follows:
That his name is Ramon Lopez, that he is 53 years of age, married, by occupation a farmer and resides at San Carlos, Negros Occidental, P. I.

Attorney Cohn examines the witness:

Q. Do you know the property known as the Hacienda San Jose at San Carlos, Occidental Negros?
A. Yes, sir.
Q. How long have you known it?
A. Twenty-five or twenty-six years.
Q. How came you first to know this property?
A. Because I was in the employ of Leon Vega, who was the

founder of said hacienda. I had worked there on shares and as his assistant whenever he needed me.

Q. State if you know if the hacienda was surveyed in the life time of Leon Vega.

A. Yes, sir.

Q. Were you present during that survey?

A. Yes, sir.

Q. By whom was it surveyed?

390 A. Eduardo Fuentes.

Q. At the time of that survey were the boundaries of the hacienda marked?

A. It was marked at the time that they were measuring it.

Q. I call your attention to this plan marked Exhibit "Z-A" and ask you to state whether the boundary line at the extreme left of the plan up to this point, the extreme top of the plan, how this line was marked?

A. It was surveyed by calculation, by placing flags on the trees and slope of the mountain and looking at the flags with an apparatus, the nature of which I do not know, and from that situation to change the apparatus, and so on.

Q. The question refers more particularly to the manner of marking the corners or boundaries?

A. By making a cross.

Q. On what was this cross placed?

A. On the trees at the height of a man.

Q. How were these crosses placed upon the trees?

A. They were cut into the tree with an axe.

Q. Please state if those marks still exist?

A. Yes sir. The marks for the most part still exist. Some of them have been destroyed by fire, but even in those cases the roots are still there and can be recognized and identified. I know this is the case because one or two days before leaving there, in order to qualify myself, I went over the boundary lines and found them to be correct.

Q. What do you mean in finding them to be correct, correct in accordance with what?

391 A. I have found the same trees.

Q. I show you this plan appearing at folio 993 of the record in this case and ask you to state if on the occasion of your recent visit you followed the line from corner 37 to corner 59 on this plan.

A. Yes sir. I followed from the River Hindalaman, which is in the south, to the River Andong, which is in the north.

Q. Did you find the trees which are referred to on this plan of this property?

A. Yes sir.

Q. How do these trees compare with those which marked the boundary at the time of the survey of Eduardo Fuentez?

A. Some of them are burned, but the roots are still existing.

Q. Those which are still in existence, are they on the present boundary line or not?

A. On the actual boundary.

Q. And the roots of those that were burned, are they on the actual boundary line or not?

A. Yes sir.

Q. Do you know a portion of the Hacienda San Jose that has been known as "Los Pastos"?

A. All the hacienda where the cattle feed is called the Pastos.

Q. Was there a portion of this hacienda that was known as Los Pastos?

A. The place where the cattle feed was called "Los Pastos."

392 Q. Was this portion known as "Los Pastos" within or without the survey of Eduardo Fuentez?

A. It was included.

Q. When you say it was surveyed do you mean that it was within the line or without?

A. Within this plan, Exhibit "Z-A", and also this plan, official plan at the page 933.

Q. Look now at Exhibit "Z-A" and state whether the place called "Los Pastos" in the Hacienda San Jose appears on the plan.

A. Yes sir.

Q. Please point out where, on this map, appears that part of the hacienda known as "Los Pastos"?

A. Here it is, all this part over here.

Q. Please mark it with a red pencil.

A. Witness proceeds to do so.

Q. Please state if you can, with reference to this dotted red line which appears on the map, what is the part of the hacienda San Jose known as "Los Pastos"?

A. To the south, adjoining the Hindalaman River.

Q. Please complete the line commenced by you, marking the "Los Pastos".

A. (Draws line.)

Q. The line which you have drawn is a single line, which does not include any particular place. Please draw a circle, including within itself the land known as "Los Pastos".

A. (Draws circle with red pencil.)

393 Q. At the death of Leon Vega did you take any part in the distribution or partition of the property left by him?

A. I was the executor, of the will, named therein, for the partition of the property.

Q. Did you perform the functions of executor in the partition of the property?

A. Yes sir.

Q. Do you know of your own knowledge of the real property left by Leon Vega?

A. The property in that location I know. There were other properties in other locations of which I know nothing about.

Q. Please state how many parcels of land belonged to Leon Vega in that locality at the time of his death.

(Attorney Seva objects to question.)

(Objection overruled.)

A. He had the Hacienda San Jose and the Hacienda San Antonio, and a small portion outside, adjoining the Hacienda San Antonio, of which land I am now the owner.

Q. Was the Hacienda San Antonio left in the same persons as the Hacienda San Jose?

(Objection by Attorney Seva.)
(Objection overruled.)

A. No sir. The Hacienda San Jose was inherited by the widow because the will so ordered, and the Hacienda San Antonio was inherited by the nephew of Leon Vega, named Teodoro.

Q. Who made the partition between the Hacienda San Jose and Hacienda San Antonio?

394 (Attorney Seva objects.)
(Objection overruled.)

A. I did myself, and Don Gregorio Jamboa and Don Leon Diza.

Q. Did the land that was turned over by you as executor of Leon Vega to Romana Gauzon, as the Hacienda San Jose included that portion which you have included on the map "Z-A" with red pencil, and which was known as "Los Pastos"?

(Objection by Attorney Seva.)

(Court to witness:)

Q. The court will ask the witness this question. How was that partition made, in writing or how?

A. Verbally, because it was ordered by the will.

(The Court:) The witness may answer the question.
(Attorney Seva makes objection to answer.)
(Objection withdrawn.)

A. Yes, it included all of this land, pointing to the map "Z-A".

Q. Did Leon Vega, in his life time or Romana Gauzon, own or possess any land in this locality other than that which appears on map "Z-A", and the Hacienda San Antonio, left to another heir?

A. Nothing that I know of.

Q. Has your knowledge of the Hacienda San Jose been continuous during the past 25 years?

A. Yes sir, because of the fact that part of the time I was living on the same hacienda, and the balance on the boundary.

(Court now adjourns until 2:30 o'clock, p. m., same day.)
(Court opened at 2:30 o'clock, p. m., same day.)

395 (Ramon Lopez continues on stand.)
(Witness examined by Attorney Seva.)

Q. You testified, did you not, in the trial of this expediente, in San Carlos, on the 6th of January, 1911, as the witness for the opponent?

A. Yes sir.

Q. This opponent spoke to you prior to the date of the trial so that you would testify as a witness in his behalf?

A. Yes sir, to testify about the boundaries.

Q. And you told them and he told you that you did not wish to testify?

A. I did not, but they testified.

Q. And on the 6th of January, 1911, you were summoned by the Land Court to testify as one of the witnesses for the opponent?

A. It is true.

Q. When this opponent spoke to you on this occasion you were at San Carlos, the same town where the trial was being held?

A. Yes, I live there, close to that place.

Q. And for you to testify here in Manila, as a witness for the petitioner it did not require you to be summoned by the Land Court, did it?

A. I testified there, I had to corroborate my former testimony.

Q. I wish you would answer my question. You have not been summoned to come here to Manila. That is all I want to know.

A. I have been summoned by the company.

Q. By summoned, do you say what you mean, or do you mean to say that you were asked by the petitioner?

396 A. I was asked.

Q. But you were not summoned by the court?

A. No sir.

Q. Now prior to this second trial of the case, do you not remember Mr. Lopez that the opponent in this case had a conversation with you with reference to the boundaries of the land known as "Las Pastas", which is the parcel outside of the Hacienda San Jose?

A. I do not remember.

Q. Do you remember that the opponent was at your house and she was entertained by your family a couple of days or so after that big typhoon of October last year?

A. Yes, it is true that she was there.

Q. Do you not remember that there was a conversation between you and her about this particular case, and especially about the land known as "Las Pastas"?

A. May be that we have had a conversation wherein it was said that I believed that outside of the old and new plans, that I believed that she had land outside of them.

Q. How long had you not visited the place before you inspected it, when you knew that you were coming here as a witness?

A. The last time was when I went for the company and they took charge of the hacienda, and pointed out the boundary trees for them at their request.

Q. What was the first time you arrived in San Carlos?

A. It was in the end of 1887 or the beginning of 1888.

Q. Where were you coming from then?

397 A. From Manila.

Q. What was your business in Manila?

A. Member of the army.

Q. What was your rank in the army?

A. Soldier, in the artillery.

[illegible] [illegible] [illegible] [

A. Yes sir, in order to be sure whether the boundaries were the same.

Q. Did you find any monuments when you went over the boundaries the last time?

A. Yes, sir, I found the same trees, marked with crosses, although some of them were burned, the greater part — still there and of the burned ones the stumps were there.

(Question by Attorney Colin:)

Q. Speaking now of the quiñones that Leon Vega left outside of the boundaries of the Fuentes survey, are these quiñones that were then left outside still outside of the present boundaries of the hacienda?

A. They are still outside.

(Question by Attorney Seva:)

Q. All the signs or monuments which you found when you went over the boundary line the last time were those trees?

A. Yes, those trees, some of which were burned.

(Attorney Colin:) I desire to offer in evidence this plan, Exhibit "Z-A", in connection with the testimony. (Accepted.)

(Attorney Colin:) I believe that there is in evidence already the mortgage executed by Homana Gauzon in favor of the petitioner, but in order not to rely upon memory and to be sure that the document may be considered by the court, I desire to offer formally, in evidence, the mortgage by Homana Gauzon to the Tabacalera, by reason of which the Tabacalera has succeeded, by foreclosure, to this property. (Accepted.)

(Attorney Colin:) I have omitted to offer in evidence, and think it necessary, because it does not appear in record, bits of exception and briefs filed by the Supreme Court by all of the parties.

(Accepted and marked Exhibits "Z-B", "Z-C", and "Z-D".)

The attorney for the petitioner, with the consent of the court, stated that he would like a written brief in support of his contentions, the attorney for the opponent reserving the right to file an answer thereto. At this point both of said attorneys informed the court that they had no further evidence to produce, and therefore rested their case.

The Court reserved its decision until after the briefs are filed.

I hereby certify that the above is a true and correct transcription of the stenographic notes taken by me at the hearing of the above-entitled registration case, held at the time and place above stated.

Manila, P. I., January 18, 1913.

(Sgd.) PERCY G. DWYRE,
Stenographer, Court of Land Registration.

401 Heading and Title Omitted.

Case No. 6303.

Decision.

The present case having been returned by the Supreme Court to this court for a new trial, Romana Ganzon filed a new written opposition (Folio 1009) and at the new trial both petitioner and objector presented their respective proofs.

The principal questions raised are the following:

(*a*) Whether or not the objector Romana Ganzon has the right to redeem the 465 hectares 33 ares and 82 centares of land referred to in the royal title appearing at page 9.

(*b*) Whether or not the petitioner company has the right to the title it seeks to the whole amount of the land described in the plan at folio 993 of the record.

With regard to the first question, this court is of the opinion that the objector Romana Ganzon does not have the said right of repurchase. We have to deal with a sale that was the result of the foreclosure of a mortgage—a case which falls within the special provisions of law contained in articles 254 et seq. of the Code of Civil Procedure; by virtue thereof the said objector has lost all of her rights in and to the property so sold and the said rights have already been conferred upon the petitioner.

With regard to the second question, this court finds that the evidence presented does not sufficiently prove the right of the petitioner to title to the portion of land purchased from
402 Andres Mondragon and claimed by Romana Ganzon in her new written opposition as belonging to her. The testimony of the witnesses at the original hearing of this case in regard to the predecessors in interest of Andres Mondragon and the former and original occupants of the portion in dispute has been contradicted and, in the opinion of the undersigned, and its value has been considerable diminished by the testimony of the witnesses for the objector who testified that the said predecessors in interest of Andres Mondragon were only tenants on shares of Leon Vega, the objector's husband. And Ramon Lopez, although in the new trial he testified that he had gone over the whole of the land and had found the original boundaries which he knew of old, nevertheless said nothing about the new monuments on the land. By the testimony of this witness alone, therefore, it is impossible to say whether the modern monuments include more land or not than the old ones found by him; in other words, whether the hacienda San Jose as described in the plan at folio 993 includes or not more land than that parcel the boundaries of which were known to the witness.

It is true that the position taken by Romana Ganzon at the original trial was markedly inconsistent with that she took at the new trial. In the latter, in addition to the right of redemption over a certain portion, she claimed the right of ownership over the part of the land which was not included in the royal title, whereas at the original

trial she only claimed the right of repurchase. But even though it were necessary to overrule her opposition on account of this inconsistency, yet the evidence adduced by the petitioner has not
403 sufficiently demonstrated his right to the title he claims with regard to the said lands purchased from Andres Mondragon.

And in view of the notable difference between the area of the land described in the royal title and that contained in the plan at folio 993 it would be rash to maintain that the portion in question is a part of the land that was granted by the said royal title because the proofs submitted do not justify such a conclusion.

As to the rest, it has been shown without contradiction that the petitioner company acquired ownership of the portion measuring 465 hectares 33 ares and 82 centares referred to in the royal title at page 9 of the record, and that it entered into possession of the land and maintained such possession up to the present time in a peaceful, exclusive, and public manner, without interruption and under title of ownership.

Wherefore by virtue of the above conclusions, the court by these presents decides and resolves:

First. That the opposition of Romana Gauzon, in so far as she claims the right to repurchase the land in question, or a portion thereof, is overruled.

Second. That with regard to that portion of land which was bought by the petitioner company from Andres Mondragon, the petition is also overruled, and there is reserved to the petitioner the rights allowed by section 37 of Act No. 496.

And third. The adjudication and registration of all the remainder of the land, the boundaries of which shall be defined by the plan prepared for the purpose and duly approved by the Bureau of Lands, is hereby ordered and the said portion which was
404 bought by the petitioner from Andres Mondragon shall be excluded therefrom.

After this judgment becomes final and the plan as above ordered shall have been presented, let decree issue.

Tacloban, Leyte, P. I., April 30, 1913.

(Sgd.) NORBERTO ROMUALDEZ,
Auxiliary Judge.

I certify that the foregoing is a true copy.

May 13, 1913.

(Sgd.) RALPH E. McFIE,
Clerk of the Court.

(Here follows notice of service of copy.)

Heading and Title Omitted.

Exception of the Petitioner.

Now comes the petitioner in the above entitled case by means of its attorneys and respectfully excepts to the judgment rendered on

April 30, 1913, and also prays that the same be annulled and set aside and that a new trial be ordered for the following reasons:

1. Because the evidence does not sufficiently justify the decision of the court.
2. Because the said decision is contrary to law; and
3. Because the findings of fact contained in said decision are openly and manifestly contrary to the weight of the evidence.

405 Manila, P. I., May 16, 1913.

(Sgd.) HAUSSERMANN, COHN & FISHER,
By CHAS. C. COHN,
Attorneys for the Petitioner.

(Here follows notice of service of copies.)

Let the exception be noted. Motion for new trial denied.

Manila, June 4, 1913.

(Sgd.) NORBERTO ROMUALDEZ,
Auxiliary Judge.

Heading and Title Omitted.

Exception of the Objector.

Now comes the undersigned attorney in the name of the objector Romana Gauzon and to the honorable court respectfully sets forth:

That in yesterday's mail he received a copy of the decision entered in this case on the 30th of April ultimo.

That to that part of the judgment which refers to the question of the right of redemption, the objector excepts and asks that the same be annulled and set aside and that a new trial be ordered for the following reasons:

First. That the evidence does not justify the decision of the court in declaring that the objector does not have the right to repurchase the 465 hectares 33 ares and 82 centares of land
406 referred to in the royal title which is contained in the record.

Second. Because the said decision is contrary to law in so far as it refers to the right of redemption.

Bacolod, May 21, 1913.

(Sgd.) A. P. SEVA,
Attorney for the Objector.

(Here follows certificate of service of copy.)

Let the exception be noted. Motion for a new trial denied.

Manila, June 4, 1913.

(Sgd.) NORBERTO ROMUALDEZ,
Auxiliary Judge.

Heading and Title Omitted.

To the Attorney-General, Messrs. Haussermann, Cohn & Fisher, Attorneys for the Petitioner, 9 Plaza Cervantes; D. R. Williams, Attorney for the Objector Romana Gauzon, 6 Escolta; these two last in Binondo, both of Manila, P. I.; and A. P. Seva, also Attorney for the Objector Romana Gauzon, in Bacolod, Occidental Negros, P. I., Greeting:

The clerk of this court having submitted for our consideration the document presented by the attorneys for the petitioner in the above entitled case, dated May 16, ultimo, and appearing at folio 1179 of the record, in which they excepted to the decision of this court and ask that the same be annulled and that a new trial be
407 ordered on the grounds that the evidence does not sufficiently justify the decision; that said decision is contrary to law; and that the findings of fact contained therein are openly and manifestly contrary to the weight of the evidence, the court resolved thereon as follows:

"Let the exception be noted. Motion for new trial denied. Manila, June 4, 1913. (Sgd.) Norberto Romualdez, Auxiliary Judge."

Manila, June 5, 1913.

(Sgd.) RALPH E. McFIE,
Clerk of the Court.

(Here follows notice of service of copy.)

Heading and Title Omitted.

To the Attorney-General, Messrs. Haussermann, Cohn & Fisher, attorneys for the petitioner, 9 Plaza Cervantes; D. R. Williams, attorney for the Objector Romana Gauzon, 6 Escolta; these two last in Binondo, both of Manila, P. I.; and A. P. Seva, also Attorney for the Objector Romana Gauzon, in Bacolod, Occidental Negros, P. I., Greeting:

The clerk of this court having submitted for our consideration the document presented by Mr. A. P. Seva, attorney for the objector Romana Gauzon in the above entitled case, dated May 21 ultimo, appearing at folio 1180 of the record, wherein he excepts to the decision rendered by this court in so far as it concerns the right of
408 repurchase and asks that the same be annulled and set aside and that a new trial be held on the following grounds:

First. That in declaring that the objector does not have the right to redeem the 465 hectares 33 ares and 82 centares of land referred to in the royal title contained in the record the evidence does not justify the decision; and

Second. That said decision with regard to the right of repurchase is contrary to law, the court resolved thereon as follows:

"Let the exception be noted. Motion for new trial denied. Manila, June 4, 1913. (Sgd.) Norberto Romualdez, auxiliary judge."

Manila, June 5, 1913.

(Sgd.) RALPH E. McFIE,
Clerk of the Court.

(Here follows notice of service of copy.)

Heading and Title Omitted.

Comes now the petitioner in the above entitled case, through its undersigned attorneys, and to the court respectfully sets forth that it excepts to the order denying the motion for a new trial in the above entitled case.

Manila, P. I., June 6, 1913.

(Sgd.) HAUSSERMANN, COHN & FISHER,
By CHAS. C. COHN,
Attorneys for the Petitioner.

(Here follows notice of service of copy.)

Let the exception be noted. Manila, July 10, 1913.

(Sgd.) DIONISIO CHANCO,
Auxiliary Judge.

409 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Widow of Vega, Defendant and Appellant.

I, the undersigned Clerk of the Supreme Court of the Philippine Islands, hereby certify that the record in the above-entitled case, No. 6303 in the Court of Land Registration, was received and filed in this office on October 3, 1913, and docketed under No. 9349.

That the appellant Compañia General de Tabacos de Filipinas, filed its brief on December 15, 1913.

That the objector and appellant Romana Gauzon filed her brief on February 4, 1914, and another brief in answer to that of the

Compañia General de Tabacos de Filipinas, on February 12, 1914.
That the case was submitted for hearing on March 19, 1914.
That the following decision was rendered on November 20, 1914:

Decision.

410 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Applicant and Appellant,

versus

ROMANA GAUZON, Opponent and Appellant.

Nov. 20, 1914.

MORELAND, *J.*:

This is an appeal from a judgment of the Court of Land Registration decreeing registration of a part only of the lands described in the petition. The appeal was taken by both the applicant and the respondent, the applicant because of the refusal of the court to register all of the lands described in the petition, and the respondent for the reason that, although the court found that the applicant had not proved title to that portion of the lands the registration of which was refused, the court, nevertheless, declined to declare that the respondent was the owner thereof.

In September 1905 the hacienda San Jose, being the property of Romana Gauzon, was mortgaged to the applicant in this case as security for the payment of an indebtedness. In said month and year the mortgagee commenced an action to foreclose and in April 1906 the foreclosure was decreed in the usual terms, the mortgagor being allowed to pay the mortgage debt within the period prescribed by law and in default thereof providing for the sale of the property by the sheriff. The sum due not having been paid, the court, in July 1906, ordered the property sold to satisfy the same. In September of the same year the property was sold by the sheriff to the Tabacalera Company, said company being the highest bidder at the sale. When the certificate of sale was issued to the purchaser by the sheriff it was made to recite that the property was sold subject to the right of redemption at any time within twelve months thereafter.

411 Some time after the foreclosure the petitioner made application for the registration of the property so purchased under the Torrens System. To this end it caused a survey to be made of the hacienda, from which it resulted that, as described and claimed by the company, the hacienda contained 611 hectares, 33

ares and 82 centares. From the record in this case it would appear that, so far as Romana Gauzon was concerned, the hacienda was made up of two portions; one portion consisting of 465 hectares, 33 ares and 82 centares, was obtained by a royal grant, while the remaining portion, namely, 146 hectares, was obtained by her from other sources not disclosed. To register the entire parcel as private land it was necessary to show legal title in the petitioner for the entire area. This title the Tabacalera Company showed by purchase at the foreclosure sale, but deeming it necessary to show title to the 146 hectares in its predecessors in interest, the Company bought from one Mondragon his alleged right, title and interest in and to about 137 hectares situated on the outskirts of the hacienda and with in the lines drawn by the survey made by the company. Mondragon claimed that he had purchased from persons who had acquired title to the land by the requisite adverse possession and that they were the owners at the time they sold to him. He offered to sell this land to the company and threatened to claim adversely and to oppose the registration in case the Tabacalera Company did not buy him out. To avoid this situation and the complications arising therefrom the Tabacalera Company purchased the rights of Mondragon. The company thereupon made application for the registration of the entire hacienda San Jose, presenting with its application both the sheriff's deed to the entire hacienda and the quitclaim deed from Mondragon for certain outlying parcels.

In the registration proceeding two parties appeared as respondents,—the Government of the Philippine Islands and Romana Gauzon. The former opposed the registration on the ground that the company and its predecessors in interest had title to only 465 hectares, 33 ares and 82 centares of the land described in the application and that the balance of the 611 hectares was public land.

Romana Gauzon, on the other hand, did not oppose the regis-
412 tration applied for but insisted that the same be made subject to her alleged right to redeem the lands from the foreclosure sale, and the whole thereof, alleging that not only 465 hectares thereof but the entire 611 hectares was included in the mortgage and had been sold on the foreclosure sale and that the deed from Mondragon conveyed no interest whatever.

On the trial of the cause Romana Gauzon bent all her efforts to demonstrate that her alleged right to redeem under the foreclosure sale applied to all of the land, that is, to that covered by the royal title as well as to the 146 hectares lying outside of the limits of the royal grant. In this attempt she showed that the persons who had been occupying the 146 hectares for many years, and who had attempted to convey alleged interests to Mondragon, were her tenants and that they had occupied the lands all those years subject to her rights as owner.

The court of land registration overruled the oppositions of the Insular Government and held that the claim on the part of Romana Gauzon that she was entitled to redeem was unfounded. From this judgment only Romana Gauzon appealed, she insisting here upon her right to redeem the 611 hectares from the foreclosure sale.

This was the only question presented by Romana Gauzon on the appeal. In the resolution of that appeal the court was led to believe, from the brief of counsel for the appellee, that the company did not claim the 146 hectares by virtue of the foreclosure sale but claimed title to it under the quitclaim deed from Mondragon only. Under this view of the case there was presented the anomalous situation of the petitioner trying to prove the respondent's case and respondent vigorously seeking to establish the petitioner's case. In other words, under the case as presented to this court, it appeared that Romana Gauzon was attempting to prove that the 146 hectares were included in the mortgage and that, therefore the company obtained title thereto on the foreclosure and that she was, consequently, entitled to redeem not only the 465 hectares but the 146 hectares as well; while, on the other hand, the company, in order to sustain its deed from Mondragon, was insisting, and, on the trial, attempting to prove that the 146 hectares had never been in the possession of Romana Gauzon, that if she ever had title
413 thereto it was lost and that, therefore, the 146 hectares were not included in the mortgage. Confronted, apparently by this strange situation, the court reversed that portion of the judgment of the court of land registration ordering the registration of the 146 hectares, affirmed so much of the judgment as ordered the registration of the 465 hectares, and denied the right of redemption.

A motion was made for a rehearing. Upon the rehearing arguments were presented to show that the court had misunderstood the intentions of counsel for the appellee and that it was not intended to assert or claim that the 146 hectares *was* not included in the mortgage given by Romana Gauzon to the company. The hearing demonstrated to the satisfaction of the court that there had been such a serious confusion of the issues by the parties and that the case had been tried upon such conflicting theories, that justice would be better subserved by the vacating of all the judgments in the case and the return of the cause for a new trial. This was accordingly done and this appeal is from the judgment rendered on the new trial.

On the retrial of the case Romana Gauzon changed her attitude and insisted that the 146 hectares had never been included in the mortgage and that she was still the owner thereof. On the other hand, the company changed what this court, from its brief, assumed was its former position, and strenuously claimed that the 146 hectares *was* included in the mortgage, it having been understood between the parties, and the instrument itself demonstrating, that Romana Gauzon mortgaged all of the land which she owned at the time in that locality; and that the purchase from Mondragon was made, not because the company did not have faith in its title to the 146 hectares under the foreclosure, but for the reason that the company thought it cheaper to buy up his adverse claim than to litigate it.

Upon the whole case we are of the opinion that so much of the judgment of the court of land registration as refuses registration of the 146 hectares, in other words, so much thereof as refuses to register all of the land described in the petition, is erroneous and

must be reversed. The court below found that while Romana Gauzon had not shown herself to be the owner of the 146
414 hectares, the petitioner was not entitled to register the same for the reason that it had not clearly demonstrated that it was the owner thereof.

From the record in the case we are convinced that, as between Roman Gauzon and the company, the latter has clearly shown itself to have title; and there being no other parties to the proceeding, the government having acquiesced in the decision of the court of land registration overruling its opposition, we see no reason why the registration should not be allowed.

We do not go into a full discussion of the record. It appears so clearly from the statements and admissions of Romana Gauzon and of her counsel upon the first trial that she understood and believed at all times that the 146 hectares, which she now claims, were included in the mortgage to the company and that she never had or claimed to have any interest therein except the right of redemption, that, under all the facts and circumstances of the case, we cannot now accept her change of front and award her title which she formerly so strenuously rejected. With that admitted, as it was on the first trial, it is unnecessary to go into a detailed discussion of the case. On the other hand, while, from the company's brief on the first appeal in this case, it appeared to this court that it assumed the position which we have stated above, that position was susceptible of explanation, being based on an interpretation of the language of its brief, and we are satisfied that the explanation given by counsel is sufficient. Romana Gauzon, however, finds herself in a position extremely difficult to explain. Her admissions and position in the first trial were so unequivocal and so directly in opposition to those that she now assumes and takes, that we believe the merits of the controversy are entirely with the petitioner.

The judgment of the court of land registration is hereby modified and the court is ordered to decree the registration of all land described in the application.

415 After the expiration of 20 days let judgment be entered in accordance herewith, and 10 days thereafter let the case be returned to the court whence it came for execution.

So ordered.

(Sgd.) SHERMAN MORELAND,

We concur:

(Sgd.) C. S. ARELLANO.
" FLORENTINO TORRES.
" A. C. CARSON.
" MANUEL ARAULLO.

Justices Johnson and Trent did not take part.

416 That on December 3, 1914, the defendant and appellant Romana Gauzon filed the following exception and motion for a rehearing:

Exception and Petition for Rehearing.

Comes now the defendant above named, by her attorneys, and excepts to the decision heretofore rendered in this matter, and respectfully petitions for a rehearing thereof upon the following grounds, to wit:

(1) The decision of the Trial Court is reversed, and registration of the total area of land solicited by plaintiff decreed, on the ground that upon the original hearing of the case the defendant treated and considered such total area as included in the mortgage executed by her. While it is also admitted in such opinion that the applicant, upon the original hearing, treated such mortgage as including an area of 465 hectares only, and sought to establish title to the additional 137 hectares through a conveyance of one Andres Mondragon, the Court concludes that this attitude of the applicant was taken simply to eliminate opposition.

We submit that the view taken by the Court in this matter is not in accord with the facts or with the justice of the case.

It is to be remembered that upon the original hearing the principal issue raised by the defendant was her right to redeem from the mortgage foreclosure. Should this right be recognized, it was immaterial to her whether the mortgage was treated as applying to 465 hectares or to her entire property of 611 hectares. When the
417 case was remanded for a new trial, evidence was offered and is of record, showing that the land actually mortgaged by her was only that portion covered by the "título real", to wit, 465 hectares.

The present appeal should be decided upon the record thus established, and not upon any mistaken theory of the attorneys who represented defendant on the original hearing.

It is submitted furthermore that an examination of such original record will show that this tacit admission that the mortgage covered the whole of the 611 hectares was that of the attorney, and not of the defendant herself. Now that the case is before the Court upon its merits, the defendant should not be bound by this attitude of her counsel, particularly in view of the fact that upon such original hearing the plaintiff took the attitude that 465 hectares only were included in the mortgage, and that the additional area had been acquired from Andres Mondragon.

Attention is invited to the fact that the defendant, upon such original hearing, expressly testified that these 137 hectares were not included in her "título real". In reply to interrogatories by the attorney for the Government, the defendant testified as follows (p. 13, 2d part):

Q. Is the land which was adjudicated to you in the royal title the only land which you possess there on the hacienda San Jose?

A. The royal title contains more land at the side, on the slope of the mountain, of greater extent than in the royal title.

Q. Your royal title contains a lesser area than that asked for in the application to the registry for the certificate of registration?

A. Yes, sir; it is less.

(p. 52, Test.:)

418 Q. When you were granted the real title was the property measured or not?

A. It was measured.

Q. Who measured it?

A. Don Eduardo Fuentes.

Q. And how did he measure it, do you know?

A. By the eye apparently. They were more than half day measuring it.

Q. Was a plan made from that measurement or survey?

A. Yes, a plan was made but it was afterwards sent to me.

Q. Where is that plan now?

A. The Tabacalera has it.

Q. When did you give it to the Tabacalera?

A. When I mortgaged the property.

The plan delivered to the Tabacalera was of the land covered by the "título real" concession, being the land mortgaged.

On the following page (53), defendant says:

Q. You remember the surveyor named Hernandez or Fernandez?

A. Yes, sir.

Q. Did you have this property measured again?

A. I remember that I had the hacienda measured at another time.

Q. About when was that?

A. In 1905 or 1906.

Q. When you made this survey what was the approximate result of Hernandez' survey?

A. It turned out to be 600 hectares, the hacienda and mountain lands together.

419 The mortgage to the Tabacalera Company was executed December 10, 1904. This new measurement, which showed the total area, including the hacienda and the mountain, was 600 hectares, was had in 1905 or 1906, being subsequent to the mortgage.

Only one conclusion can be drawn from the above testimony, i. e., that the "hacienda", or land mortgaged to the Tabacalera Company, was that covered by the concession ("título real"), and that this mountain land (137 hectares) was not included in the mortgage.

There is no substantial basis for the contention of the Court that the defendant estopped herself upon the ground that the original mortgage from claiming that the total area was not included in the mortgage.

(2) Upon both hearings the defendant insisted upon her right under the existing law to redeem this property upon mortgage foreclosure. Her brief presented in this Court argues this point at length, and what is believed to be conclusive authority is offered in support of her position.

While this Court, in its original opinion, held that such right did not apply, we take it that when a rehearing was granted, and the case remanded for a new trial, this decision became without authority in the case. As a basis for possible appeal to the Supreme Court of the United States, it is important that this question of law be definitely passed upon by the Court. Attention is invited to the fact that

in the opinion rendered, this assignment of error on the part of defendant is entirely ignored. We believe the point is entitled to consideration, and should be definitely decided.

150 For the reasons above stated, it is submitted that the decision rendered works an injustice upon the defendant, and that a rehearing should be granted.

In conclusion, we would state that the issues counted in this case, and the parties in interest, live in Bacolod, Occidental Negros, and advice was only received from them this date, asking that petition for rehearing be filed upon the merits, and as a foundation for possible appeal to the Supreme Court of the United States. For this reason it was not possible to file the petition within ten days following the decision, and we would, therefore, respectfully ask that the slight deviation from the court rule be excused, and that the petition be considered upon its merits.

Manila, P. I., December 2, 1914.

Respectfully submitted.

(Sgd.) A. P. SEVA,
" D. C. WILLIAMS,
Attorneys for Defendant and Appellant,
No. 6 Escolta, Manila.

That on December 10, 1914, the court passed the following resolution:

After considering the motion of counsel for the defendant and appellant in case No. 9349, Compañia General de Tabacos de Filipinas vs. Romana Ganzon, wherein they pray for a reconsideration of the decision entered in said case and that the appellant be granted a new trial, the court resolved: Motion for a new trial denied.

121 With respect to the right of the objector to redeem the property sold on foreclosure, the court repeats its finding in the decision entered in the first action, and adopts the doctrine announced in the case of Bernaldo vs. Yulo (20 Phil. Rep. 646).

That on December 12, 1914, the following judgment was entered:

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner and Appellant,

vs.

ROMANA GANZON, Objector and Appellant.

Judgment.

December 12, 1914. File No. 9349.

The court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after

consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 20th day of November, A. D. nineteen hundred and fourteen,

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of Land Registration, dated the 15th day of April nineteen hundred and thirteen and from which the above-entitled appeal was taken, be, and the same is hereby modified and the court is ordered to decree the registration of all land described in the application.

It is further ordered that ——— ——— recover from ——— ——— the sum of P———, as costs.

(Sgd.) V. ALBERCA,
Clerk of the Supreme Court of the Philippine Islands.

That on December 23, 1914, the record was returned to the Court of Land Registration.

That on February 19, 1915, counsel for appellant Romana Ganzon filed the following:

Exception and Notice of Appeal.

Heading and Title Omitted.

Comes now the defendant and appellant above named, by her undersigned attorneys, and excepts to the decision heretofore rendered in this matter, and also, to the order of this Honorable Court denying the petition for a rehearing therein;

And hereby respectfully gives notice of her intention to appeal from said decision and said order to the Supreme Court of the United States of America.

Manila, P. I., February 18, 1915.

WILLIAMS, PETERSEN & SYCIP,
By J. W. PETERSEN,
Attorneys for Defendant and Appellant,
No. 2 Escolta, Manila.

Received copy this 18th day of February, 1915.

GIBBS, MACKEMAN, COHN & PHELPS,
By CHARLES P. COHN,
Attorneys for Opponents and Appellees.

That on February 19, 1915, counsel for appellant Romana Ganzon filed the following:

Heading and Title Omitted.

Notice of Intention to Present a Petition for a Writ of Error.

Comes now the defendant and appellant above named, by her undersigned attorneys, and respectfully notifies this Honorable Court and the plaintiff herein that it is her intention to present a petition for a writ of error, in order that the manifest errors appearing in the decision of this Court may be corrected by the Supreme Court of the United States of America, to which Court it is intended to prosecute such writ of error.

Manila, P. I., February 18, 1915.

WILLIAMS, FERRIER & SYCIP,
By J. W. FERRIER,
Attorneys for Defendant and Appellant.

Received copy this 18th day of February, 1915.

GILBERT, HAUSSERMANN, COHN & FISHER,
By CHARLES C. COHN,
Attorneys for Plaintiff and Appellee.

That on February 20, 1915, the Court passed the following resolutions:

February 20, 1915.

Upon consideration of the writing presented by counsel for the objector and appellant in case No. 9349, the Compañía General de Tabacos de Filipinas vs. Romana Gauzon, wherein they announce their intention of presenting a petition for a writ of error to the Supreme Court of the United States, the court resolved: That
421 the said writing be attached to the record of the case for its preservation and other effects.

February 20, 1915.

Upon consideration of the writing presented by counsel for the objector and appellant in case No. 9349, Compañía General de Tabacos de Filipinas vs. Romana Gauzon, wherein they except to the decision of this court and to the order denying the motion for a new trial dated in said case, the Court resolved: Exception filed in time and in due form.

That on March 1, 1915, counsel for plaintiff and appellee filed the following objections to allowance of the appeal and writ of error:

Heading and Title Omitted.

Now comes the plaintiff and appellee in the above-entitled cause and respectfully appears and objects to the allowance of the appeal and of the petition for a writ of error unto the Supreme Court of the United States in the said cause, basing said opposition and

objection upon the ground that the amount in controversy in the above-entitled cause consists solely of the alleged right of redemption of the property in question and of the value of one hundred and thirty-seven hectares of land, and that the total value of said amount in controversy is not equivalent to the sum of P50,000.00, Philippine currency.

Wherefore said plaintiff and appellee respectfully petitions this Honorable Court to wholly refuse and deny the said appeal and writ of error petitioned and prayed for by the defendant herein.

GILBERT, HAUSSERMANN, COHN & FISHER,
pp. CHARLES C. COHN,
Attorneys for Plaintiff and Appellee.

425 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

It is stipulated by and between the parties hereto that all the affidavits filed with respect to the amount in dispute in the above entitled action on behalf of the defendant Romana Gauzon shall be considered as having been presented in support of both the petition for appeal and the petition for a writ of error and that all the counter-affidavits shall be considered as having been presented in opposition both to said petition for appeal and said petition for a writ of error.

Manila, P. I., Dec. 1st, 1916.

(Sgd.) GIBBS, McDONOUGH & BLANCO,
Attorneys for Romana Gauzon.
GILBERT, COHN & FISHER,
(Sgd.) pp. CHARLES C. COHN,
Attorneys for the Compañia General de Tabacos de Filipinas.

426 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON viuda de Vega and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

PHILIPPINE ISLANDS,
City of Manila, ss:

Romana Gauzon, being first duly sworn, deposes and says: that she is 56 years of age; that her husband Leon Vega died in the year 1894; that being indebted for advances to one Lazaro Mots and also to the plaintiff Compañia General de Tabacos de Filipinas and the latter having acquired the former's credit, affiant on December 10, 1904, executed in favor of the said plaintiff represented by Luis G. Espoy, its manager at that time at Iloilo, a mortgage for the aggregate of said obligations to-wit P53,042.53, with compound interest at 10% per annum, on her sugar hacienda at San Carlos, Occidental Negros, P. I., known as "San Jose," in which mortgage it was stipulated that the obligation should become due on June 30, 1905, but that it might be renewed another year at the will of the said plaintiff as mortgagee; that after the execution of said mortgage, affiant being without means to operate her hacienda, the said plaintiff mortgagee placed upon said hacienda a representative commonly known as an "interven*t*or" (intervenor) whose salary was charged to affiant's account and whose duty to the company was to determine what expenditures were necessary to be made in
427 the operation of the hacienda and to prepare requisitions therefor on the said plaintiff company which were signed by affiant and approved by said interven*t*or and the amount thereof remitted by the plaintiff to said interven*t*or who delivered the same to affiant for expenditure in the operation of said hacienda under his supervision; that it was also the duty of said interven*t*or to see that all proceeds of sales of sugar were applied on account of said indebtedness; that all the sugar cane raised on said hacienda and "Los Pastos" was milled in the mills of affiant on said hacienda and all the sugar thus produced after the execution of said mortgage and until the appointment of the receiver was shipped to the plaintiff Company at Iloilo and the amount allowed therefor applied on account of said mortgage indebtedness, notwithstanding the fact that "Los Pastos" was not included in said mortgage.

That soon after said mortgage became due to-wit in the month of September, 1905, the plaintiff, while still supervising the operation

of said hacienda through its said interven*t*or, and after having expended large sums which were charged to the account of affiant in planting a new crop of sugar cane, filed a complaint against affiant for the sum of P51,784.29 the balance due on the 15th of July, 1905, and for P6,000.00 for attorney's fee and costs of court, and at the same time upon false allegations obtained the appointment of Juan Pomar, one of its own employes at San Carlos as receiver of said hacienda; that upon learning of the filing of the complaint and the appointment of a receiver, affiant called upon Luis C. Espoy, the manager of the plaintiff company at Iloilo, and inquired of him why the company had taken such action against her whereupon the said Espoy told affiant that the only purpose was to protect the interests of the Company insuring it the preference in case of there being other creditors, that it simply wished to convert its obligation into a judgment but that it would permit affiant to go ahead operating her hacienda and would assist her financially as before until she could pay off the judgment, that the company did not want and had no intention of taking her hacienda and that she should pay no attention to the action in court; that affiant believing the statements of the said manager of the plaintiff company,
428 employed no counsel and took no steps to defend said action so that the plaintiff company obtained judgment by default against her on the 18th of April, 1906, for the sum of P58,687.03 in addition to P1,500 attorney's fee and costs (Ex. "G", fol. 80) and which judgment for the principal sum of the mortgage as affiant is informed by her present counsel and believes is approximately five thousand pesos in excess of the amount then due as disclosed by the allegations of plaintiff's own complaint which prayed for but P51,784.29 with interest at 10% from July 15, 1905 (Ex. "I"), whereas the trial court by an error which the plaintiff company wilfully failed to have corrected, rendered judgment for the full amount of the mortgage with interest from December 10, 1904, the date of the execution of said mortgage; that after said judgment was rendered, affiant again talked with the manager at Iloilo of the plaintiff company and requested him to grant affiant an extension of time within which to pay said indebtedness; that the said manager replied that he thought such an extension could be granted but that he would have to consult the manager in Manila with reference thereto and again assured affiant that she need have no fear of the company's taking her hacienda from her; that affiant remained in Iloilo from that time on awaiting a reply to her request for an extension of time, calling upon said manager from time to time and being told each time that no answer had yet been received until the time within which to pay in the money had expired; that while the manager of the plaintiff company was thus entertaining affiant, he advanced further sums to her for her personal expenses and to the receiver and interven*t*or to continue the exploitations of the hacienda and after taking affiant's receipts therefor, although judgment by default had already been rendered against her for the full amount of the mortgage indebtedness and for five thousand pesos more than she owed (Ex. "G"), the said plaintiff taking ad-

vantage of affiant's inexperience and of the fact that she then had no lawyer, in some manner unknown to affiant, caused these additional sums thus advanced to her during the litigation to be added to the amount of the mortgage for which judgment had been previously rendered thus increasing the amount necessary to
429 to be paid in order to avoid the sale of the hacienda to P75,-420.54. (See Ex. "9" and decision of the Supreme Court of the Philippine Islands of April 13, 1909, 13 P. R. 481.)

That upon the expiration of the period provided for the payment of the mortgage indebtedness, the Sheriff first levied upon plaintiff's piano, household furniture and other personal property on said hacienda not covered by the mortgage as well as upon some carabao including therein and sold the same upon execution at San Carlos in the month of August, 1906, the proceeds of said sale after deduction of his fees amounting to P3,055.00 and subsequently on September 12, 1906, sold the hacienda San Jose at public auction to the plaintiff at Bacolod, Negros Occidental, P. I., for the sum of P64,326.92 reserving to affiant the right to redeem the same within the period of twelve months from September 12, 1906; that after crediting affiant with the proceeds of the two auction sales above mentioned, there remained a balance according to the judgment of the court on September 12, 1906, P7,838.62 and the said plaintiff instead of taking a deficiency judgment in the foreclosure proceeding upon motion, for the purpose of causing affiant additional expense and preventing her from redeeming said hacienda, brought a separate and independent suit against her for said balance and caused an attachment to be levied upon affiant's right of redemption and the sugar cane growing upon said hacienda (see Ex. "9", judgment of the Court of First Instance of August 29, 1907 and judgment of the Supreme Court of the Philippine Islands of April 13, 1909, 13, P. R. 481).

That said judgment of April 29, 1907, was not finally satisfied nor said attachment of affiant's right of redemption released until November 27, 1911, due to the refusal of the receiver Juan Pomar acting under the instructions of the plaintiff to render a correct accounting of the disposition of the sugar cane so attached and left in his hands (see Compañia General de Tabacos v. Romana Gauzon, 20 P. R. 261 and Ex. "X-2").

That as affiant is informed and believes the said plaintiff company through its employe Juan Pomar acting as receiver of said hacienda and other agents in charge thereof produced enough sugar thereon and on "Los Pastos" during the years 1907-1908, 1908-1909
430 and 1909-1910 to entirely satisfy said mortgage indebtedness before the month of March, 1910, when the application in this case was filed to register said property and long before said right of redemption was released from said attachment; that since the filing of said application and before the sugar cane of said hacienda "San Jose" and "Los Pastos" was milled in the San Carlos Central, the said plaintiff secured three more crops, that is to say, those of the years 1910-1911, 1911-1912 and 1912-1913, from which affiant is

informed and believes said plaintiff company realized a net profit of approximately P100,000.00.

That of the combined area of the hacienda "San Jose" and "Los Pastos", four hundred sixty hectares are now cultivated to sugar cane and the principal part of the remaining 151 hectares may also be used for the same purpose; that of said 460 hectares 400 hectares are first class sugar lands and the other sixty hectares while good are not quite so productive.

That the sugar cane of said hacienda is contracted to the large sugar central of San Carlos in the proportion of sixty per cent for the owner of the hacienda and forty per cent for the central of the centrifugal sugar thus produced; that the cost of planting and harvesting the same is approximately P3.00 per pico.

That affiant is reliably informed and believes that since the said sugar central at San Carlos began operating the hacienda "San Jose" and "Los Pastos" together produced with its crop of 1913-1914 approximately 27,500 piculs of centrifugal sugar, with its crop of 1914-1915 approximately 21,000 piculs of centrifugal sugar and with its crop of 1915-1916 approximately 34,000 piculs of centrifugal sugar, and that said sugar sold at prices which produced an average net profit to the plaintiff of approximately P3.33⅓ per picul, that is to say, more than P278,000.00 for said three crops; that the present 1916-1917 crop is estimated at 25,000 piculs and at current prices will produce a net profit to the plaintiff company of P100,000.00 so that upon harvesting the 1916-1917 crop, the plaintiff will have realized a net profit of approximately P378,000 from said hacienda "San Jose" and "Los Pastos" since said sugar central began operating at the commencement of the year 1914.

431 That affiant knows the market value of sugar lands in Occidental Negros, and especially those of the hacienda "San Jose" and "Los Pastos" and all the other sugar lands in that vicinity, the cane of which are contracted to said San Carlos Sugar Central; that of the land of said hacienda "San Jose" and "Los Pastos", said 400 hectares of first class sugar lands have a market value of P1,000.00 per hectare and the remaining sugar lands approximately P800.00 per hectare.

That in the year 1906, said hacienda "San Jose" and "Los Pastos" were worth in the market approximately P250,000.00. That the establishment of the said sugar central at San Carlos and the contract entered into between the land owners and the central for a term of 30 years has doubled the value in the market of said lands.

That the sugar lands at San Carlos are assessed for taxation at but P300.00 per hectare but that they are worth much more is shown by the fact that since said sugar central began operating, all of said lands contracted to it have produced each year a net profit approximately equal to their said assessed value.

That said hacienda "San Jose" and "Los Pastos", without their improvements, are worth in the market at the present time approximately a half million pesos, and the plaintiff has realized over and above said mortgage indebtedness nearly another half million pesos

net profit from said hacienda "San Jose" and "Los Pastos" since it wrongfully deprived affiant thereof.

That affiant could and would have raised the money and paid off the amount of her mortgage indebtedness previous to the sale of said hacienda had not the manager of said plaintiff company falsely and fraudulently represented to affiant and induced her to believe that the company had no intention of depriving her of said property and that an extension of time would be granted sufficient to enable her to satisfy said indebtedness.

That affiant is now absolutely destitute and dependent upon the charity of her friends for food and shelter and due to lack of funds has been unable to sooner arrange for the perfection of this appeal to the Supreme Court of the United States.

(Sgd.) ROMANA GAUZON.

432 Subscribed and sworn to before me this 22nd day of November, 1916; affiant is exempt from cedula by reason of her sex. I also certify that the contents of the foregoing affidavit has been translated by me into the Spanish language to affiant previous to her signing the same.

(Sgd.) J. E. BLANCO,
Notary Public.

My commission expires Dec. 31, 1916.
Doc. No. 151, Page No. 82, of my Notarial Register for 1916.

433 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellant,

vs.

ROMANA GAUZON viuda de Vega and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellees.

CITY OF MANILA,
Philippine Islands, ss:

Alberto Kappeler, duly sworn, deposes and says: that he is 54 years of age and a resident of the municipality of San Carlos, Negros Occidental, where he has resided during the last 25 years; that during said time he has devoted himself to agriculture and specially to the cultivation of sugar cane; that since the year 1891 he has been one of the owners of the hacienda known as "Refugio" situated in said municipality of San Carlos, which said hacienda has been devoted to the cultivation of sugar cane for many years; that the said hacienda "Refugio" includes a total of 478 hectares, 300, approxi-

mately, of which are devoted to the cultivation of sugar cane and the rest, consisting of lands for raising corn and other products outside of sugar cane and certain parts not fit for cultivation; that in the month of September of this year, affiant and his partner Mr. Ledessa sold the said hacienda to Francisco Echevarria, Ramon Gamboa and Antonio Menchaca, for the sum of P350,000 including the improvements of the approximate value of P70,000 and the sugar cane in the field representing a crop of 24,000 to 26,000 piculs of sugar; that the 178 hectares devoted to the cultivation of corn and other products, outside of sugar cane, have an approximate value of P60,000 per hectare.

That affiant since the year 1891 has been well acquainted with the hacienda "San Jose" of 465 hectares as well as with the adjoining parcel known as "Los Pastos" and which were formerly owned
434 by Mr. Leon Vega and subsequently by his widow Romana Gauzon, the whole property being now occupied by the Compañia General de Tabacos de Filipinas.

That the said hacienda "San Jose" and the parcel known as "Los Pastos" is about eight kilometers from the hacienda "Refugio."

That of the joint lands of the hacienda "San Jose" and the parcel known as "Los Pastos" 460 hectares are cultivated with sugar cane and the rest with corn and other products outside of sugar cane; that of the said 460 hectares of sugar land, approximately 400 hectares are first class and the other 60 hectares, though good land, are less productive.

That the greater part of the parcel known as "Los Pastos" is at present first class sugar land.

That one hectare of good sugar land should produce an average of about 80 peculs per year of centrifugal sugar.

That the sugar cane of said hacienda "San Jose" has been contracted for by the Sugar Central of San Carlos in the proportion of sixty per cent for the owner and forty per cent for the Central, of the proceeds of the centrifugal sugar.

That according to reliable information which affiant believes, since the establishment of the San Carlos Sugar Central, the said hacienda "San Jose" and "Los Pastos," together, have produced from the crop of 1913-14 approximately 27,500 piculs of centrifugal sugar with a net profit for the owner of the hacienda at the rate of P2.50 per picul; from the crop of 1914-15 about 21,000 piculs with a net profit for the owner at the rate of P3.50 per picul; and from the crop of 1915-16, about 34,000 piculs with a net profit for the owner at the rate of P4.00 per picul, thus making a total net profit for the owner of P278,250.00; that it is very probable that the present crop of 1916-17 shall produce approximately 25,000 piculs which should bring in an additional net profit of P100,000.00 at least, considering the present prices of sugar, that is to say, at the end of the crop of 1916-17 the Compañia General de Tabacos, from the time that the Sugar Central began to operate shall have obtained a net profit of about P378,250.00 from said hacienda "San Jose" and the parcel known as "Los Pastos."

435 That affiant is well informed as to the market value of sugar lands in Occidental Negros including those of the hacienda "San Jose" and "Los Pastos" and all other tributary lands of the Sugar Central in the municipality of San Carlos, where the only Sugar Central of importance in said province exists; that of the said hacienda "San Jose" and the parcel known as "Los Pastos", the aforesaid 400 hectares of first class sugar land have a market value of at least P1,000.00 per hectare and the remaining 60 hectares approximately P800.00 per hectare.

That in the year 1906, the said hacienda "San Jose" and the parcel known as "Los Pastos" together had a market value of approximately P250,000; that the establishment of the sugar central and the contract made by the owners of the sugar lands with the said central for a period of 30 years, has doubled the market value of the lands thus contracted for with the sugar central including the said hacienda "San Jose" and "Los Pastos"; that the sugar lands in the municipality of San Carlos are assessed at P300.00 per hectare but that they are worth much more is evident from the fact that since the date the said Sugar Central began to operate, all those lands contracted for with the said Sugar Central, have produced a yearly net profit of approximately the assessed value thereof.

That the hacienda of "San Jose" and the parcel known as "Los Pastos" without the improvements, have at present an approximate value of four hundred and fifty thousand pesos, and if the value is calculated upon the rent which they have produced during the last three years, then, the said lands are worth at least seven hundred and seventy-five thousand pesos for the reason that they have paid an income of twelve per cent upon the said sum.

That affiant is not related to any of the parties to this suit and has no other interest in the case except to see that justice be done.

(Sgd.) ALBERTO KAPPELER.

Subscribed and sworn to before me, this 20 day of November, 1916, affiant exhibiting to me his cedula No. F-971799, issued at San Carlos, Negros Occidental, on February 8, 1916.

(Sgd.) J. E. BLANCO,
Notary Public.

My commission expires Dec. 31, 1916.
Doc. No. 148, Page No. 81 of my Notarial Register for 1916.

436 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

PHILIPPINE ISLANDS,
City of Manila, ss:

Lope P. Severino, representative of the First District, Rafael R. Alunan, representative of the Second District, and Gil Montilla, representative of the Third District, of Occidental Negros, being first duly and severally sworn, each for himself, deposes and says: that he is a member of the House of Representatives of the Philippine Islands as above stated; that his permanent home is in Occidental Negros where he owns and cultivates sugar lands; that he knows the market value of sugar lands in general in Occidental Negros and in particular in the Municipality of San Carlos; that all first class sugar lands in the Province of Occidental Negros the cane from which is not contracted to sugar centrals are worth in the market five hundred pesos (P500.00) per hectare. That all the first class sugar lands in the municipality of San Carlos which are contracted to the sugar central of San Carlos are worth in the market at least one thousand pesos per hectare and since that central began operating about the first of January, 1914, said sugar lands have been producing an annual net profit to their owners of from P250.00 to P300.00 per hectare.

(Sgd.) LOPE P. SEVERINO.
(Sgd.) RAF. R. ALUNAN.
(Sgd.) GIL MONTILLA.

437 Subscribed and sworn to before me by the said Lope P. Severino, Rafael R. Alunan and Cil Montilla all of whom understand the English language, this 22nd day of November 1916, Mr. Severino exhibiting to me his Cedula No. F-980695 issued at Silay, Negros Occidental, P. I. Jan. 27th, 1916; Mr. Rafael R. Alunan exhibited to me his Cedula No. F-923275 issued at Bacolod, Negros Occidental, P. I. Jan. 19th, 1916; and Mr. Gil Montilla exhibited to me his Cedula No. H-23714 issued at Isabela, Negros Occidental, P. I. May 5th, 1916.

(Sgd.) J. E. BLANCO,
Notary Public.

My commission expires Dec. 31, 1916.
Doc. No. 150, Pag- No. 82 de mi Registro Notarial.

438 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner and Appellant,

vs.

ROMANA GAUZON, Opponent and Appel-ant.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

Antonio Malvehy, being duly sworn, deposes and says: That he is one of the managing officers in the Philippine Islands of the corporation known and designated as the Compañia General de Tabacos de Filipinas; that as such managing officer he is thoroughly familiar with the property hereinafter designated as the Hacienda Fortuna and with the relations of said corporation to said property; that the said Hacienda Fortuna is a sugar plantation consisting of 1,317.9 hectares situated in the Province of Negros Occidental, Philippine Islands, within the operating zone of the San Carlos Milling Company under contract to the said San Carlos Milling Company, and three haciendas removed from the hacienda known as Hacienda San Jose.

That heretofore, to-wit, in the month of August, 1914, there was due and owing to the Compañia General de Tabacos de Filipinas from the owner of said Hacienda Fortuna the sum of P192,849.94, which said sum was then and there secured by a valid first mortgage upon the said Hacienda Fortuna; that on the 14th day of August, 1914, the owner of said Hacienda Fortuna as mortgage debtor, and the Compañia General de Tabacos de Filipinas, as mortgage
439 creditor, mutually agreed that said Hacienda Fortuna with all of the improvements, equipment and crops thereon, was actually worth the sum of P200,000.00, and thereupon upon said 14th day of August, 1914, the said owner of the Hacienda Fortuna under and by virtue of a public instrument, a copy of which is hereto attached, in payment and satisfaction of the aforesaid indebtedness and of the cash payment of P7,150.06, making a sum total of P200,000.00, sold and conveyed the said Hacienda Fortuna unto the said Compañia General de Tabacos de Filipinas, together with all of the buildings, equipment, machines, railroad, crops, cattle, etc., contained thereon; that a copy of said deed of transfer, omitting the technical description, is hereto attached and made a part hereof; that in lieu of the usual and ordinary period required for the foreclosure of a mortgage in the Philippine Islands, the Compañia General de Tabacos de Filipinas on the occasion of the foregoing transfer, vol-

untarily granted unto the mortgage debtor the period of one year within which to redeem the said Hacienda Fortuna by means of the voluntary promise of said company to reconvey the said Hacienda unto the former owner thereof for and in exchange of the sum of P220,000.00. And further affiant sayeth not.

(S'g'd) ANTONIO MALVEHY.

Subscribed and sworn to before me this 29th day of November, 1916.

Affiant exhibited to me Cedula No. C-218 issued at Manila, P. I., the 23rd day of May, 1916.

(S'g'd) J. PEREZ CARDENAS,
Notary Public.

My commission expires December 31, 1916.
Doc. No. 1580, Reg. No. IV, Page No. 29.

440 This instrument, made and executed in Iloilo on the 14th day of August, 1914, by and between Miss Maria Gay, a spinster, of legal age and a resident of Iloilo, P. I., party of the first part, and the Compañia General de Tabacos de Filipinas (a corporation) party of the second part,

Witnesseth: That for and in consideration of the sum of two hundred thousand pesos (P200,000), Philippine currency, paid by the purchaser Compañia General de Tabacos de Filipinas and received by the vendor Maria Gay to her entire satisfaction in the form of the cancellation of each and all of the debts contracted by her in favor of the purchaser and which at this date amount to one hundred ninety-two thousand eight hundred forty-nine pesos, ninety-four centavos (P192,849.94) and the payment in cash of the sum of seven thousand one hundred fifty pesos, six centavos (P7,150.06) to make up the said sum of two hundred thousand pesos (P200,000), the said Maria Gay by these presents cedes and transfers by sale to the party of the second part, its successors and assigns, the parcel of land called and known under the name of "La Hacienda Fortuna," situated in the municipality of San Carlos, Occidental Negros, P. I., with each and all of the improvements, implements and accessories on the said hacienda such as the buildings, machinery, tramways, crops, cattle, etc., etc.; which parcel of land was formerly described as follows:

"Rural property, consisting in the agricultural estate called the 'Hacienda Fortuna,' situated in the sitios of Magbabuy and
441 Jagna, in the pueblo of Calatrava, now annexed to the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, with all the improvements and buildings, machinery, cattle and other accessories and appurtenances annexed thereto; the said hacienda is composed of a tract of land of four hundred cavanes of rice seed, more or less, and is bounded on the north by the River Pannolan; on the south by the River Macapso; on the east by the sea and on the west by Government forest land," of which land, with the exception of the forest zone stipulated and mentioned in the

decision of the Court of Land Registration, the said vendor has been and up to the present time is the true owner, the title to which is now in course of being registered in accordance with law in the registry of property as is set forth in the decision signed and entered by the Court of Land Registration on the 25th day of June, 1914, in case No. 9372 of said court, together with each and all of its improvements, implements and accessories of the said hacienda such as the buildings, machinery, tramways, crops, cattle, etc., etc., all of which property is described and enumerated in the inventory which is attached to this deed marked Inventory "A" and which forms an integral part of the same.

And the said vendor by these presents guarantees the said purchaser company that she is the owner in fee with full ownership of the real and personal property which by these presents are sold and transferred, all of which is free from all mortgage claims or incumbrance whatever with the exception of the mortgages which were executed in favor of the purchaser company, and saving the
442 forest land zone established by agreement with the Government at the hearing in the Court of Land Registration and mentioned in the decision of the said court.

The said purchaser hereby accepts the sale and undertakes to comply with the agreement regarding the forest zone; it acknowledges payment to its entire satisfaction of each and all of the debts and obligations owed it by the vendor and it undertakes to execute in good and sufficient form the cancellations corresponding to each and all of the mortgages by which the said obligations were secured up to the present time.

And the said vendor undertakes to execute and deliver to the purchaser company all documents proper and necessary in order to effect the registration of the sale above set forth in the registry of property after perfecting the technical description and indicating the forest zone in the plans.

In witness whereof the respective parties have hereunto set their hands in Iloilo on the date above mentioned.

(S'g'd) MARIA GAY,
Compañia General de Tabacos de Filipinas.

(S'g'd) C. A. FERRANDIZ,
Manager of the Iloilo Branch.

In the presence of:

(S'g'd) DANIEL A. ALVAREZ.

443 UNITED STATES OF AMERICA,
Philippine Islands,
Province of Iloilo, ss:

In the city and municipality of Iloilo, P. I., this 14th day of August, 1914, personally appeared before me Miss Maria Gay and Mr. Carlos A. Ferrandiz, as manager of the branch in this city of the Compañia General de Tabacos de Filipinas, known to me to be

the persons who executed the foregoing instrument and who certified it to be an act of their own free will and deed.

The former did not exhibit any cedula as she is exempt from the payment of the tax and Mr. Carlos A. Ferrandiz exhibited his cedula No. F-1187634, issued in Iloilo on March 3, 1914.

In witness whereof I set my hand and affix my official seal to this certificate in the city and municipality of Iloilo on the date above mentioned.

Before me.

(S'g'd) ENGRACIO PADILLA,
Notary Public until December 31, 1915.

Page 48, Reg. 425, Book 2.

Know all men by these presents, That we, the undersigned lessees of the Hacienda Fortuna, for and in consideration of the execution of the foregoing instrument by Miss Maria Gay and the Compañia General de Tabacos de Filipinas and other sufficient considerations receipt of which we hereby acknowledge, ratify and confirm
444 the said instrument in all of its parts and wholly terminate and cancel the contract of lease which has up to the present time existed in our favor in the said Hacienda Fortuna.

In witness whereof we sign these presents in this city of Iloilo this 14th day of August, 1914.

(S'g'd) GERONIMO SANZ.
" ANTONIO MENCHACA.

Signed in presence of:

(S'g'd) DANIEL ALVAREZ.
" illegible.

UNITED STATES OF AMERICA,
Philippine Islands,
Province of Iloilo:

In the city of Iloilo, Province of Iloilo, P. I., this 14th day of August 1914, personally appeared before me Messrs. Geronimo Sanz and Antonio Menchaca, personally known to me to be the persons who executed the foregoing instrument and who certified the same to be an act of their own free will and deed. Mr. Geronimo Sanz exhibited his cedula No. 54588, issued in the municipality of Iloilo, Iloilo, on August 14, 1914, and Mr. Antonio Menchaca exhibited his, No. 777,216, issued in the municipality of San Carlos, Occidental Negros, on April 15, 1914.

Before me.

(S'g'd) ENGRACIO PADILLA,
Notary Public until December 31, 1915.

Reg. 424, Page 48, Book 2.

445 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner and Appellant,

vs.

ROMANA GAUZON, Opponent and Appellant.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

Carlos de las Heras, Federico Correa, and Antonio Malvehy, being each duly sworn, each for himself and not one for the other deposes and says: That he is now, and for some time last past has been, one of the managing officers in the Philippine Islands for the Compañia General de Tabacos de Filipinas, Petitioner in the above entitled action; that as such officer he has personal knowledge of the "Hacienda de San Jose" which is the subject matter of the above entitled proceedings in the former Court of Land Registration of the Philippine Islands, and more particularly of the value of the lands comprised in said "Hacienda de San Jose," and of lands of similar character and similarly situated; that the fair and reasonable value of such part of said lands as are best adopted for, and most productive of, sugar cane, at the present time is the sum of Three Hundred Pesos, (P300.00) per hectare, and that the said value of the remain-
446 der of said lands varies from the said sum down to the sum of Sixty Pesos (P60.00), per hectare; that of the most valuable of said lands there are included and comprised in the said Hacienda de San Jose not more than sixty (60) hectares and that the total value of the lands comprising the said hacienda, at the present time, does not exceed the sum of from One Hundred and Fifty Thousand to Two Hundred Thousand Pesos, Philippine Currency, or $75,000 to $100,000, United States Currency;

That by far the greater portion of the present value of the lands comprised in the said "Hacienda de San Jose" and of the lands similar and adjacent thereto, is of recent growth and has been added during the calendar years 1915 and 1916 to the former value of said lands, by the reason of the high prices then and now prevailing in the world markets for the sugar producible upon said lands, and by reason of the favorable and advantageous facilities for the milling and manufacture of said sugar which are afforded by the sugar central of the San Carlos Milling Company, located in the immediate vicinity of said lands;

That heretofore, to-wit: during the year 1906, the lands comprising the said "Hacienda de San Jose" and the whole thereof,

prior to the foreclosure of the mortgage of the Compañia General de Tabacos upon the same, were publicly offered for sale in the City of Iloilo and other centers, by and with the joint consent of mortgagor and mortgagee for the sum of Fifty Thousand Pesos (or $25,000 U. S. Currency); that notwithstanding such offers and the diligent efforts of the Compañia General de Tabacos to procure the sale of said "Hacienda de San Jose" at said price, no offers of the said sum were obtainable therefor; that subsequently, in said
447 year 1906, and the said lands, and the whole thereof, were offered for sale publicly by the Sheriff of Negros Occidental, after due notice, and the same were so sold to the mortgagee company, without competition on the part of third persons, for the sum of less than P65,000.00 (or $32,500 U. S. Currency) by reason of the interest which said company had therein on account of the sums theretofore advanced on the security thereof; that subsequently, and in said year- 1906, and 1907, the mortgagee company, as the purchaser of said lands, did make further effort in the City of Iloilo and other centers to sell and dispose of said lands for the said sum of Fifty Thousand Pesos (P50,000.00) and said company was wholly unable to secure the said price therefor or any price reasonably approximating the same;

That, thereafter, to-wit: commencing with said year 1907 the said mortgagee company, as purchaser of said lands, in default of the sale of the same, has invested and employed large and important sums in the improvement and development of the same; that notwithstanding the investment and employment of said moneys, the intrinsic value and market value of said lands did not appreciably increase by reason of the fact that large and extensive areas of equal and similar lands, in holdings of various sizes, and capable of equal and similar cultivation and production were available;

That the value of said lands, and the whole thereof was formally declared under oath, by the agent of Romana Gauzon, on May 31st, 1906, to be the sum of P33,900; that said declaration was thereupon revised by the Municipal Board of Taxation for the Municipality of San Carlos, on August 23, 1906, and the value of said lands was then and there fixed by said Board at the sum of P43,250; that thereupon the said valuation of said lands was reviewed and revised by the Provincial Board of Tax Appeals, and the value thereof was fixed at the sum of P35,900 by said Provincial Board; that thereupon
448 the said valuation of said lands was again reviewed and revised by the Central Board of Equalization and by said Board the value of said lands was fixed at the sum of P44,880;

That thereafter, to-wit: during the year 1913, the valuation of said lands was revised for the purposes of taxation for the year 1914, by the Provincial Assessor of Negros Occidental, and the value of said lands was then and there appraised at the sum of P44,880;

That at the time of the commencement of the above entitled proceedings and at the date of the entry of the final judgment of this Honorable Court therein, to-wit: on or about the 12th day of December 1914, the actual market value of the lands comprised in said "Hacienda de San Jose" did not exceed the sum of P200 per hec-

tare for the most productive parts thereof, nor the sum of P30 per hectare for the least productive parts thereof and that the entire lands comprised in said "Hacienda de San Jose" did not exceed in value the sum of P105,000 (or $52,500 U. S. currency; that the sum of P65,000, paid by the mortgagee company at foreclosure sale in September, 1906, augmented at the rate of one (1) per cent per month from said date to said 12th day of December, 1914, would amount on said last named date to the sum of P129,000 (or $64,500); that the maximum value of the amount in controversy in the above entitled action, on said 12th day of December, 1914, represented by the equity redemption of a portion of said "Hacienda de San Jose" and by the value of the remaining portion was less than P50,000 ($25,000);

That affiants have had no knowledge of the present petition for an appeal herein, nor of the facts whereon the same have been based until 4 o'clock p. m. on the 23rd day of November, 1916, and that the time intervening between the said day and hour and the 27th day of November, 1916, on which this matter again comes on to be heard has not sufficed for the production of sworn statements
449 from residents and land owners in the province of Negros Occidental wherein the subject matter of this proceeding is located.

(S'g'd) C. DE LAS HERAS,
Cedula F6995, Enero 8, 1916, Manila.

(S'g'd) F. CORREA,
Cedula F15175, Enero 29, 1916, Manila.

(S'g'd) A. MALVEHY,
Cedula C218, Mayo 23, 1916, Manila.

Subscribed and sworn to before me this 25 day of November, 1916.

(S'g'd) J. PEREZ CARDENAS,
Notary Public.

My commission expires December 31st, 1916.
Do. No. 1569, Page No. 26, Reg. No. IV.

450 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

Reply to Affidavit of Antonio Malvehy.

PHILIPPINE ISLANDS,
City of Manila, ss:

Romana Gauzon, being first duly sworn, deposes and says in answer to the affidavit of Antonio Malvehy, one of the managers of the plaintiff company with reference to the Hacienda Fortuna; that said Hacienda Fortuna is also owned by a woman — Maria Dolores Gay y Soriano; that as affiant is informed by her attorneys and believes, the original title documents as disclosed in the Court record of said Expediente 9372 show that the hacienda La Fortuna contain but 450 hectares, but that through failure of the Insular Government to prosecute its appeal to the Supreme Court of the Philippine Islands said appeal was dismissed upon application of the present attorneys of the plaintiff company so that the decree for some thirteen hundred hectares became final; that in the year 1905 the said plaintiff company had advanced sums which with the amount of a mortgage purchased from Messrs. Ynchausti & Co. aggregated about one hundred thousand pesos to the said Maria Dolores Gay taking as security said hacienda then supposed to contain but 450 hectares; that in November, 1912, the said Maria Dolores Gay entered into a contract of lease with some third persons in which the said plaintiff company intervened as a party for a period of five years with
451 the privilege of five years more by which said third parties were to receive four-fifths of the crops and she the remaining one-fifth which after certain deductions was to be delivered to the plaintiff company on account of its claim against her; that the said plaintiff company having procured from the said Maria Dolores Gay an approval of its statement of her account showing a total indebtedness of but P58,000.00, thereafter in the year 1913 prevailed upon her to agree to another statement reciting that due to mistakes, errors and miscalculations on the part of the plaintiff company the indebtedness had been understated and that the true amount of said indebtedness was P139,180.28 and the plaintiff company then and there in consideration of the recognition of this increased indebtedness loaned her P20,000.00 more, making the total sum loaned her in 1913 P159,180.28; that in the year 1914 the said record recites

a first mortgage on said hacienda of P200,000.00 and a second mortgage of P50,000.00, both in favor of said plaintiff company.

That on November 30, 1914, the present counsel of plaintiff company filed a statement in said Expediente 9372, setting forth that their client had received a conveyance and delivery of said hacienda La Fortuna from the applicant and praying that the title issue in its name, but the Land Court denied this motion until such time as the document of transfer should be presented, and which document does not yet appear to have been presented.

That on July 31, 1916, the applicant Maria Dolores Gay y Soriano filed a petition praying that the title issue in her name and that of several other Filipinos without making mention of the plaintiff company; from all of which affiant deduces that the said plaintiff company has not yet succeeded in taking the hacienda La Fortuna from its owner.

That as affiant is informed by her attorneys and believes the transaction consisting of said conveyance to the plaintiff company attached to Antonio Malvehy's affidavit of November 29, 1916, together with the agreement to reconvey in one year mentioned in the same affidavit was in effect nothing but a venta con pacto de retro in two documents.

452 That affiant is further reliably informed and believes that the hacienda La Fortuna contains but four hundred hectares of land cultivated to and valuable for sugar cane growing, and that the remainder of said hacienda produces nothing of any consequence; that the hacienda La Fortuna was not contracted to the San Carlos Central until the year 1915 when it was contracted on the basis of 45 per cent to the Central and 55 per cent to the owner of the hacienda as against 40 per cent to the Central and 60 per cent to the owner of the hacienda San Jose and Los Pastos; that at no time has La Fortuna produced as much sugar cane as the San Jose and Los Pastos; that the 1915-1916 crop of the hacienda La Fortuna milled by the San Carlos Central was 1,805 tons equivalent to 28,880 piculs of sugar as against 2,165 tons equal to 34,640 piculs from the hacienda San Jose and Los Pastos; that as affiant is informed and believes the 400 hectares of sugar land of La Fortuna has a large 1916-1917 crop; that said sugar land is reasonably worth at least one thousand pesos per hectare.

(S'g'd) ROMANA GAUZON.

Subscribed and sworn to before*me* me this 1st day of December, 1916; affiant being exempt from cedula by reason of her sex. I also certify that the contents of the foregoing affidavit has been translated by me into the Spanish language to affiant previous to her signing the same.

(S'g'd.) J. E. BLANCO,
Notary Public.

My commission expires Dec. 31, 1916.
Doc. No. 158, Page No. 83 of my 1916 Notarial Register.

453 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

PHILIPPINE ISLANDS,
City of Manila, ss:

Romana Gauzon, being first duly sworn, deposes and says that on the 12th of December, 1914, when final judgment was rendered in the above entitled action, the market value and the assessed valuation for taxation of the land in controversy were the same as stated in her affidavit of November 22, 1916, that is to say, one thousand pesos per hectare and three hundred pesos per hectare, respectively.

(Sgd.) ROMANA GAUZON.

Subscribed and sworn to before me this 27 day of November, 1916; affiant is exempt from cedula by reason of her sex. I also certify that the contents of the foregoing affidavit has been translated by me into the Spanish language to affiant previous to her signing the same.

(Sgd.) J. E. BLANCO,
Notary Public.

My commission expires Dec. 31, 1916.
Doc. No. 152, Page No. 82, of my Notarial Register for 1916.

454 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

Second Supplemental Affidavit of Romana Gauzon.

PHILIPPINE ISLANDS,
City of Manila, ss:

Romana Gauzon, being first duly sworn, deposes and says that as she is informed and believes and therefore alleges the fact to be the plaintiff Compañia General de Tabacos de Filipinas sold its 1913-1914 crop of sugar of approximately 27,500 piculs at prices which netted it at least P2.50 per picul long before the outbreak of the European war and under normal conditions; that said hacienda "San Jose" proper and "Los Pastos" are capable of producing under normal conditions an average of at least 25,000 piculs of centrifugal sugar per year; that the sugar cane of the hacienda "San Jose" and of "Los Pastos" was, as affiant is informed and believes, contracted by the plaintiff company to the San Carlos Sugar Central, some time in the latter part of year 1912 or early part of 1913 and said central began operating not later than January, 1914, so that the enhancement in value of the lands thus contracted was fully known long before the final judgment in this case of December 12, 1914. That said hacienda and "Los Pastos" was on December 12, 1914, of a reasonable value of at least a half million pesos and upon which valuation it is now paying the plaintiff company a net profit of at
455 least 20 per cent per year and will in normal times pay a net profit of 12 per cent on that valuation. That as affiant is informed and believes and therefore alleges the fact to be the average net profit per picul of centrifugal sugar at average normal prices and freight rates prevailing before the European war and taking into consideration the cost of labor in the Philippines will not be less at any time than P3.00 per picul for the high quality of centrifugal sugar produced by said sugar central.

That as affiant is informed and believes, the present exorbitant freight rates result in depriving the sugar producers of the Philippines of much of the advance in prices caused by the European conflict.

That Messrs. Welch, Fairchild & Co., Inc., who have their main office in Manila, are the managers of said San Carlos Sugar Central and their books contain an exact account of all the sugar produced

by and milled for the plaintiff company from the land in controversy, and the prices at which the share of said sugar central has been sold and from which a very accurate calculation may be made as to the profits derived by said plaintiff Company. That as affiant is informed by her counsel and believes and therefore alleges the fact to be the present management at Manila is unwilling to make affidavit to the facts with reference to the annual production of sugar of the property in controversy unless by consent of the plaintiff Company but that it will make such affidavit upon such consent or upon request of said plaintiff Company.

That while affiant has no certain knowledge on the subject she doubts very much whether the managers of said plaintiff Company, Carlos de las Heras, Federico Correa and Antonio Malvehy, who made the joint affidavit of November 25, 1916, have ever seen the land in controversy and this doubt is emphasized by the fact that they do not expressly state in said affidavit that they have so seen it or examined it.

That affiant believes the statement in said affidavit of said managers with reference to their effort to sell said property for P50,000.00 or for any price near that amount to be untrue; that both Alberto Kappeler, whose affidavit has already been presented but whose present whereabouts is unknown to affiant, was during that
456 period prepared and endeavoring to acquire the property by paying a considerable advance over the total indebtedness of affiant to said plaintiff Company, and affiant through her representative R. Nolan was at all times ready and willing and endeavoring to redeem said property from the plaintiff Company upon the rendition of accounts by it of the profits obtained therefrom and the release of the attachment of affiant's right of redemption.

That affiant's attention has just been called to the fact that in her first affidavit heretofore presented, she was made to say that the cost "of planting and harvesting the cane is approximately P3.00 per picul"; that what affiant thought she was stating and intended to state was P3.00 per ton of sugar cane which is the correct cost of production of the cane at the completion of the harvesting thereof according to affiant's knowledge based upon her experience as the owner of said hacienda and upon information obtained from other sugar growers.

Affiant further says that the possession or the use and occupation of the property in question is as directly in dispute under affiant's alleged right of redemption as the property itself and that the value of such use and occupation by the plaintiff Company from the beginning of the litigation until the 12th of December, 1914, was approximately P250,000.00, so that the total value of the matter in dispute on the 12th of December, 1914, was at least P750,000.00, less the amount of the plaintiff Company's mortgage with interest up to that date.

Affiant further says that the separate parcel known as "Los Pastos" of 146 hectares which is unaffected by the plaintiff Company's mortgage according to affiant's contention, contains at least

140 hectares of first class sugar land and has produced as affiant is informed and believes approximately three-tenths of the entire production of the properties combined during the last three years, that is to say, 3/10 of P278,000.00 equal to P83,400.00 without including the present crop. That said parcel known as "Los Pastos" is reasonably worth at least P140,000.00 without including the value of its use and occupation, that is to say, P89,999.99 in excess of the jurisdictional amount, so that even if the rights to redeem
457 the larger tract with the value of its use and occupation, were not in issue the amount involved would be almost treble the jurisdictional amount.

Affiant further says in answer to the intimation in oral argument of counsel for the plaintiff Company that the appeal was originally abandoned due to lack of the necessary value in controversy, that no question or doubt on the part of affiant or of her former attorneys as to the sufficiency of the value of the matter in dispute ever entered into or had anything whatever to do with the delay in perfecting the appeal but that said delay was due wholly to the inability of affiant to make arrangements to defray the heavy expenses of transcribing and printing the record for review in the Supreme Court of the United States.

(Sgd.) ROMANA GAUZON.

Subscribed and sworn to before me this 29 day of November, 1916; affiant is exempt from cedula by reason of her sex. I also certify that the contents of the foregoing affidavit has been translated by me into the Spanish language to affiant previous to her signing the same.

(Sgd.) J. E. BLANCO,
Notary Public.

My commission expires December 31-1916.
Doc. No. 157, Page No. 83, of my Notarial Register for 1916.

mpr/.

458 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

PHILIPPINE ISLANDS,
City of Manila, ss:

George C. Sellner, being first duly sworn, deposes and says that he has resided at Manila, P. I., for 18 years last past; that during the

principal part of that period he has been engaged in the business of real estate and brokerage, having bought and sold on his own account and for others large tracts of city and provincial properties; that during the last five years affiant has devoted the greater part of his time and energy to the growing of sugar cane and sale of the sugar produced therefrom; that affiant is the owner of four sugar haciendas, one in the Province of Rizal, two in Pampanga and one in Tarlac, aggregating 2,400 hectares or 6,000 acres, and holds under lease three other sugar haciendas aggregating 1,400 hectares or 3,500 acres; that previous to and at the time of acquiring said sugar haciendas and while operating the same during the last five years affiant has made a special study of and thoroughly informed himself as to the sugar industry, the prices of sugar, and the value of sugar lands in the Philippine Islands; that good sugar lands when properly cultivated and cared for produce an average of 45 tons of sugar cane per hectare and 9 tons of sugar cane in the San Carlos, Negros, region produce one ton of centrifugal sugar, making a production of 80 piculs of centrifugal sugar per hectare of sugar land; that under the first contracts between the hacenderos and the San Carlos Sugar Central, the former receive 60 per cent of the centrifugal sugar produced by their cane in consideration of the growing and delivery of the cane on board the cars furnished by the central and drawn upon tracks established between the central and the various haciendas and the sugar central receives the remaining 40 per cent in consideration of transporting the cane thus delivered to its mill and milling the same; that the cost of preparing the ground, planting, cultivating, harvesting and delivering the cane on board said cars when economically done is not to exceed P3.00 per ton, making the cost to the hacendero of the centrifugal sugar extracted therefrom about P1.70 per picul; that the lowest price to which 96 degree centrifugal sugar has ever fallen during the last twenty years is three cents U. S. currency or six cents Philippine currency per pound, equal to P8.22 per picul in New York City; that the freight rates in normal times between the Philippine Islands and New York City amount to about one peso per picul of sugar, so that at the lowest prices in normal times the average net profits of the hacenderos in the Philippine Islands must be over P2.50 per picul of all sugar produced and milled in large sugar centrals like San Carlos, producing 96 degrees centrifugal sugar; that the average price in the Philippines for centrifugal sugar since the outbreak of the European war has been P10.00 per picul, making a net profit to the hacenderos of P4.30 per picul on all sugar produced by them and milled by such sugar centrals; that it is the prevailing opinion of all sugar growers throughout the world as shown by literature upon the subject that the prices of sugar will not fall below four cents gold per pound within the next five years, no matter when the European conflict ends; that the present freight rates between the Philippines and New York City when transportation may be had at all amount to about P3.00 per picul of sugar, so that the principal portion of the

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present advance in the prices of sugar is absorbed so far as the Philippine hacenderos are concerned by excessive freight rates.

450 That according to official statistics the sugar lands of the Province of Occidental Negros yield the largest quantity per hectare and best average quality of sugar cane in the Philippine Islands, the production of that province being two-fifths (2/5) of the entire sugar production of the Islands; that all good sugar lands the cane of which is contracted to the San Carlos Sugar Central in the proportion of 60 per cent to the hacenderos and 40 per cent to the sugar central is now and was on the 12th of December, 1914, worth at the very least calculation one thousand (P1,000.00) pesos per hectare and an hacienda under such contract producing an average of 25,000 piculs of centrifugal sugar per year is and was on the 12th of December, 1914, of a reasonable value of a half million pesos and must necessarily during the entire thirty years of its contract with the sugar central in normal times and under the most unfavorable circumstances pay an interest of at least 12 per cent on that amount.

That affiant is well acquainted with the facts and circumstances surrounding the operation of the sugar central and sugar hacienda known as the San Jose in Mindoro which is owned and controlled by Messrs. Welch, Fairchild & Co., who are also the managers of the said San Carlos Sugar Central; that the said sugar hacienda San Jose contains more than 50,000 acres; that of said area Messrs. Welch, Fairchild & Co., heretofore sold 10,000 acres at P300.00 or P750.00 per hectare principally to hacenderos of Occidental Negros and more recently have laid out and either contracted or sold, in parcels of 200 to 500 acres each, 10,000 acres of said hacienda at P400.00 per acre or P1,000.00 per hectare, payable in yearly installments with interest at 8 per cent on deferred payments; that with all of the persons to whom such sales were made, the owners of said Sugar Central San Jose contracted the milling of the entire output of cane of the purchasers in the proportion of 50 per cent to the hacenderos and 50 per cent to the sugar central; that all laborers for the working of the plantations thus sold by the owners of the hacienda San Jose have to be imported from other Islands at a cost of at least P20.00 per laborer and command wages of from seventy to eighty cents per day, while laborers in Occidental Negros and in the vicinity of San

451 Carlos are very plentiful and command wages of but fifty cents per day; that as affiant is informed and believes the sugar lands under contract to the San Carlos Sugar Central are equal if not superior to those of the hacienda San Jose, so that taking into consideration the advantages in the price of labor and in the additional percentage received by the hacenderos in their contracts with the sugar central at San Carlos as against those at San Jose, the value of sugar lands at San Carlos should be considerably more than those at San Jose; that up to the present time the sugar central at San Carlos has milled more sugar than any other central in the Philippine Islands.

That affiant is not related to any of the parties in interest in this

litigation and has no interest in its outcome other than to see justice prevail.

(Sgd.) GEO. C. SELLNER.

Subscribed and sworn to before me this 29th day of November, 1916; affiant exhibiting to me his cedula No. F27, issued at Manila, P. I., Jan. 5th, 1916.

(Sgd.) CHAS. A. McDONOUGH,
[SEAL.] *Notary Public.*

My commission expires Dec. 31, 1916.
Doc. No. 309, Page No. 87 of my Notarial Register of 1916.

462 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

PHILIPPINE ISLANDS,
City of Manila, ss:

Harold M. Pitt, being first duly sworn, deposes and says that he has resided at Manila, P. I., since the year 1898 and has been engaged during that time principally in the buying and selling of real estate; that he has made a special study of the various products and especially of the exports of the Philippine Islands; that as shown by printed statistics and by affiant's investigation of the subject, the sugar lands of Occidental Negros produced by far the largest yield of sugar per hectare in the Islands and of the best quality; that the said Province of Occidental Negros had under cultivation sugar cane for the fiscal year ending June, 1915, 53,537 hectares which produced over 150,000 tons of crude sugar, while the province of Pampanga 31,292 hectares with a production of but 65,000 tons, the province of Batangas 14,000 hectares with a production of but 22,000 tons, the province of Iloilo 13,500 hectares with a production of 35,000 tons; that the total production of the Islands was 360,000 tons of crude sugar; that the superiority of Occidental Negros as a sugar producing section is disclosed by the fact that in addition to the large Central of Messrs. Welch, Fairchild & Co., at San Carlos, there are five other small centrals distributed in other sections of the province as against seven sugar centrals in the remaining portions of the Philippine Islands; that the value of all sugar lands accessible to

modern sugar centrals is doubled by favorable contracts for
463 the milling of their canes in such sugar mills, that is to say, at the prevailing rate of 50 per cent to the hacendero and 50 per cent to the sugar central or at the most favorable rate of 60 per cent to the hacendero and 40 per cent to the sugar central; that this increase of the value of the sugar lands thus contracted is due to the fact that the modern sugar centrals obtain an extraction of practically all of the cane juice, while the old mills in general use in the Philippines obtain but little over fifty per cent, and the further fact that such modern sugar centrals produce 96 degrees centrifugal sugar, whereas the old mills produce but crude sugar.

That affiant knows the value of good sugar lands in the Philippine Islands and in the province of Occidental Negros and knows that the reasonable value of such sugar lands contracted to modern sugar centrals such as the San Carlos are now and were on December 12, 1914, worth from 750 to one thousand pesos per hectare.

That affiant is not related to any of the parties in interest in this litigation and has no interest in its outcome other than to see justice prevail.

(Sgd.) HAROLD M. PITT.

Subscribed and sworn to before me this 28th day of November, 1916; affiant exhibiting to me his cedula No. F9196 issued at Manila, P. I., January 13, 1916.

(Sgd.) J. E. BLANCO,
Notary Public.

My commission expires Dec. 31, 1916.
Doc. No. 153, Page No. 82 of my Notarial Record for 1916.

464 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

vs.

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Antonio Malvehy, being duly sworn deposes and says: That he has had ample means for knowing and knows from long experience the comparative values of the Hacienda San Jose and the Hacienda Fortuna, as sugar producing plantations; that the lands of each hacienda are of the same quality and class and that said lands are

worth, acre for acre, equal prices; that there is a variation in the values of the two haciendas is entirely negligible; that the true value between good, bad, and medium lands in each hacienda is so nearly identical that the consequent variation in the proportionate total values of the two haciendas is entirely negligible; that the true value of the Hacienda Fortuna in 1914 is a fair, reasonable and proper index to the proportionate value of the Hacienda San Jose in said year.

(Sgd.) A. MALVEHY.

Subscribed and sworn to before me this 4th day of December, 1916. Cedula No. C-218, issued at Manila, P. I., the 23rd day of May, 1916.

(Sgd.) J. PEREZ CARDENAS,
Notario Publico.

El nombremiento termina el 31 de Diciembre de 1916.
Doc. 1584. Pag. 30. Reg. No. IV.

465 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

vs.

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Charles C. Cohn, being duly sworn deposes and says: That he is now and at all of the times hereinafter mentioned has been one of the attorneys for the Compañia General de Tabacos de Filipinas, in the matter of the relations of said company with the Hacienda Fortuna and with the owner of said Hacienda, Maria Dolores Gap; that as such attorney he knows of his own knowledge and upon reliable and credible information those things which usually and ordinarily come to the knowledge of attorneys in such matters, and among them the facts and circumstances hereinafter related; that his knowledge and information upon said subject is far superior to the information of Romana Gauzon received from her attorneys in the present case; that neither Romana Gauzon, nor her attorneys in the present case have had any relation, near or remote, with the affairs of said Hacienda Fortuna nor of the interests of said Compañia General de Tabacos de Filipinas therein.

And affiant further states that in the month of August, 1914, there was due owing and payable unto the said Compania General de Tabacos de Filipinas from Maria Dolores Gay, secured by
466 first mortgage upon the said Hacienda Fortuna, the sum of One Hundred and Ninety-two Thousand Pesos (P192,000.00) or thereabouts; that there was no difference, doubt, dispute nor question of any kind then pending between said creditor and said debtor respecting or concerning the said indebtedness, nor any part thereof, nor respecting or concerning the true amount thereof.

And affiant further states that in said month of August, 1914, there had been decreed, in favor of said Maria Dolores Gay, as owner, by the Court of Land Registration, a full and complete Torrens Title to the said Hacienda Fortuna, as described and claimed by said Maria Dolores Gay, and consisting of about 1315 hectares; that said registration had been secured upon ample legal proofs of the ownership of said area, without any opposition whatsoever, save and except on the part of the claimants of a very small area within the limits and boundaries of said Hacienda, and on the part of the Government on account of an alleged encroachment upon the public forest reserve which bounds said Hacienda in one direction; that during the hearing of said registration proceeding the said opposition of the Forestry Bureau was compromised and amicably settled by an agreement concerning the true boundary made in open court; that the area of 1915 hectares or thereabouts, stated for the said Hacienda Fortuna is the area thereof after deducting and excluding the portions claimed by and allowed to said Forestry Bureau in said compromise-agreement; that at the time of the execution of the agreement attached to the affidavit of Antonio Malvehy, the Compañia General de Tabacos de Filipinas, and Maria Dolores Gay were and each of them was well advised and informed, and each of them verily believed that said Hacienda Fortuna comprised and consisted of the said 1315 hectares, without any serious doubt
467 or question, and each of said parties acted in full reliance upon said information and believe in the transactions to which said document and said affidavit refer.

That the sum of Two Hundred Thousand Pesos (P200,000) for which the said Hacienda Fortuna changed hands by reason of said document aforesaid, is the real and true value which the interested parties, in good faith, and acting in the defense of their respective interests fixed upon the said Hacienda Fortuna by mutual consent; that the purchaser of said Hacienda at said price was not, at the time of said purchase, anxious nor determined to abide by said purchase, but was ready and willing to dispose of the same for said price and would greatly have preferred to reduce the said property to the said value thereof in cash; that the purchaser of said property at said price would not have given, and had refused to give for said property, any advance over said price whatsoever; that the vendor of said property, at said price, while not pretending that said property was in truth or in fact intrinsically worth any greater price, was professing for sentimental reasons to be loath to permanently part with the ownership of said property; that in deference to said

wishes, the said purchaser voluntarily and freely conferred upon the vendor the full legal right and privilege of repurchasing said Hacienda at any time within one year at the same price plus an increase of ten per cent (10%) to cover interest and expenses.

And affiant further states that said vendor of said Hacienda, through the medium of friends and relatives, including some of the most eminent and prominent European business men of the City of Manila, occupied the greater portion of one year in unsuccessful attempts to raise the funds for the repurchase of said Hacienda Fortuna at said price; that said attempts embraced and included, among other plans, the promotion and incorpora-
468 tion of a stock company for the repurchase of said Hacienda Fortuna, and the same failed for the reason that the prospective investors did not then deem that said Hacienda offered sufficient security for the investment of said sum of Two Hundred and Twenty Thousand pesos (P220,000.00); that finally, and near to the close of the year ending August, 1915, the then increase in the value of the said property, and like properties in the vicinity, afforded the requisite security for the investment, and the vendor by reason of said fact was thereupon enabled to secure the funds with which to repurchase, in August, 1915, the said property for the sum of Two Hundred and Twenty Thousand Pesos (P220,000.00).

And further deponent sayeth not.

CHARLES C. COHN.

Subscribed and sworn to before me this 4th day of December, 1916. Affiant exhibit cedula No. H-72057 issued at Manila the 18th day of May, 1916.

Doc. #1583. Pag. #29. Reg. #IV.

(Sgd.) J. PEREZ CARDENAS,
Notary Public.

My commission expires December 31st, 1916.

469 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

Petition for Appeal.

The defendant Romana Gauzon, conceiving herself aggrieved by the judgment made and entered on the 12th of December, 1914, in

the above entitled case, does hereby appeal from the said judgment to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed and that a transcript of the record proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

The property in controversy is worth Two Hundred Fifty Thousand Dollars ($250,000.00), United States Currency, and the plaintiff has already realized a net profit therefrom of approximately $200,000.00, United States Currency, in excess of the amount due on its mortgage as shown by the affidavits hereto attached and made a part of this petition.

Manila, P. I., November 22, 1916.

GIBBS, McDONOUGH & BLANCO,
(Sgd.) By A. D. GIBBS,
Attorneys for Defendant and Appellant,
Romana Gauzon, 9 Plaza Moraga, Manila.

mpr/.

470 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

Assignment of Errors.

The defendant Romana Gauzon prays an appeal from the final judgment of this Court in the above entitled case and assigns for error:

I.

The Supreme Court of the Philippine Islands erred in affirming the decision of the trial court decreeing the registration in favor of the plaintiff (petitioner) of the hacienda San Jose proper of 465 hectares.

II.

The Supreme Court of the Philippine Islands erred in reversing the decision of the trial court denying the registration of the tract of 146 hectares adjoining said hacienda and in decreeing the registration thereof in favor of the plaintiff (petitioner).

III.

The Supreme Court of the Philippine Islands erred in finding that the tract of 146 hectares was included in the mortgage to the plaintiff (petitioner) of the hacienda San Jose.

IV.

The Supreme Court of the Philippine Islands erred in finding that the tract of 146 hectares was included in the Sheriff's sale of September 12, 1906, of the hacienda San Jose.

471 V.

The Supreme Court of the Philippine Islands erred in reversing its own finding in the first decision of February 10, 1912, in which it declared:

"We are satisfied, upon the whole case, that the clear weight of the evidence, in fact the overwhelming preponderance of the evidence, is in favor of the contention of the respondent that she has demonstrated a better right to the land in question than has petitioner in this case."

VI.

The Supreme Court of the Philippine Islands erred in finding in effect that the defendant was estopped by the theory of her defense on the original hearing from denying on the new trial that the tract of 146 hectares was included in the mortgage and the Sheriff's sale.

VII.

The Supreme Court of the Philippine Islands erred in not finding that the plaintiff (petitioner) by its own allegations and proofs to the effect that it acquired the tract of 146 hectares from one Andres Wondragon in hostility to the title of the defendant (respondent) is estopped from now claiming that it derived such title from the defendant (respondent).

VIII.

The Supreme Court of the Philippine Islands erred in finding that the defendant (respondent) was not entitled to redeem the hacienda San Jose proper of 465 hectares and to have such right of redemption registered as an incumbrance upon the title, if any, of the plaintiff (petitioner) to said hacienda.

IX.

The Supreme Court erred in finding that the defendant (respondent) was not entitled to redeem the entire tract of 611 hectares and

to have such right of redemption registered as an incumbrance upon the title of the plaintiff (petitioner), if any, to said hacienda.

X.

The Supreme Court of the Philippine Islands erred in failing to take into consideration the finding previously made by it in its decision of April 12, 1909 (13 P. R. 473-476), between the same parties to the effect that at the time of said Sheriff's sale of September 12, 1906, the representative of the plaintiff (petitioner) who purchased the hacienda in question on its behalf, signed with the Sheriff and four witnesses an official record of the sale in which it was recited that the defendant (respondent) was granted a year within which to redeem said hacienda and that this record thus signed by the plaintiff as purchaser and the Sheriff as vendor contained the terms of the contract of purchase and sale which were binding upon the parties.

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XI.

The Supreme Court of the Philippine Islands erred in failing to find that the plaintiff (petitioner) by accepting the Sheriff's certificate of sale of September 12, 1906, reserving to the defendant the right of redemption again consented to and confirmed its previous agreement to grant such right of redemption and thereby waived its right, if any, to an absolute title before the expiration of the term of redemption.

XII.

The Supreme Court of the Philippine Islands erred in failing to find that the plaintiff (petitioner) by levying an attachment upon said right of redemption in a separate action against the defendant (respondent) for a deficiency judgment on account of the obligation secured by said mortgage, estopped itself from denying the existence of such right of redemption.

XIII.

The Supreme Court of the Philippine Islands erred in failing to take into consideration its previous final judgment of April 13, 1909, between the same parties (13 P. R. 484, 485) holding that the plaintiff was estopped by having attached such right of redemption to deny its existence.

XIV.

The Supreme Court of the Philippine Islands erred in failing to find that its own previous final judgment of April 13, 1909, between the same parties (13 P. R. 485, 486) expressly suspending the term for said redemption from May 10, 1907, until the judgment

in that case should become final, necessarily included within
473 it a final adjudication of the existence of that right of redemption in favor of the defendant (respondent).

XV.

The Supreme Court of the Philippine Islands erred in not holding as it did in said previous judgment of April 13, 1909, that the defendant's right of redemption "could not be exercised during the period of attachment and while the litigation was pending, by virtue of the principle that a prescriptive term shall not run against him who cannot act" (13 P. R. 485).

XVI.

The Supreme Court of the Philippine Islands erred in finding that the sale of the property in question at auction by the Sheriff divested the defendant (respondent) of her title thereto and in failing to find that the decree of the Court of First Instance affirmed on appeal by said Supreme Court of the Philippine Islands on April 12, 1909, (13 P. R. 474-476) expressly confirming such sale in accordance with the terms of the record of the auction sale subscribed by the plaintiff as purchaser and the Sheriff's certificate of sale of September 12, 1906, constituted a final adjudication to the defendant (respondent) of such right of redemption.

XVII.

The Supreme Court of the Philippine Islands erred in finding that "strictly speaking the respondent does not oppose the registration of the title of the plaintiff in and to the hacienda San Jose proper, but asks merely that it be registered subject to her alleged right of redemption" (1st decision of February 10, 1912, and last decision of November 20, 1914).

XVIII.

The Supreme Court of the Philippine Islands erred in finding in its decision of February 10, 1912, that "to hold that the act of the Sheriff and the acceptance of the document by the petitioner took a right from the petitioner and conferred it upon the respondent, would be taking property from the petitioner without any consideration whatever. The petitioner received nothing for releas-
474 ing his rights and the respondent paid nothing therefor. Besides what may be termed acts of the law, a person can be deprived of property only by his own voluntary act, i. e., by release, conveyance, etc., or by some other act or failure to act giving rise to estoppel. It is not claimed that the petitioner gave the right of redemption to the respondent. It is not claimed that he conveyed or released it. The petitioner received nothing for the transfer of that

right and the respondent neither gave nor withheld anything therefor; nor did nor does she suffer in any way from any act of the petitioner in relation thereto. She was in no way prejudiced or misled by the insertion of the clause in question, and she sustained no injury and suffered no detriment by reason of the acts of the petitioner in connection therewith. All her rights in the hacienda were gone when the insertion occurred." (See last decision of November 20, 1914.)

XIX.

The Supreme Court of the Philippine Islands erred in failing to make any finding in its last decision of November 20, 1914, as to the right of redemption of the defendant (respondent) after having wholly set aside its previous decision of February 10, 1912, on that subject.

XX.

The Supreme Court of the Philippine Islands erred in failing to find that the plaintiff by electing to collect its judgment by an ordinary execution and by levying execution of such judgment on personal property of the defendant not covered by said mortgage and selling the same, subjected itself to the obligation of recognizing and estopped itself from denying the defendant's right of redemption as provided by the Code of Civil Procedure in such executions.

Manila, Nov. 22, 1916.

(Sgd.) GIBBS, McDONOUGH & BLANCO,
Att'ys for Defendant Romana Gauzon.

475 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner and Appellant,

vs.

ROMANA GAUZON, Opponent and Appellant.

Now comes the above named petitioner and appellant in the above entitled cause and respectfully opposes the allowance of the appeal to the Supreme Court of the United States petitioned and prayed for by the opponent herein, basing said opposition and objection thereto upon the ground that the value in controversy in the above entitled cause consists solely of an alleged right of redemption of a certain portion of the Hacienda San Jose and of the value of the remaining portion thereof, and that the total of said value in contro-

versy is not equivalent to the sum of $25,000, U. S. Currency, as is set forth in the sworn statements hereto attached.

Wherefore petitioner and appellant respectfully petitions this Honorable Court to wholly refuse and deny the said appeal prayed for by the opponent herein.

Manila, P. I., November 25, 1916.

GILBERT, COHN & FISHER,
(Sgd.) pp. CHARLES C. COHN,
Attorneys for Petitioner and Appellant.

476 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

Petition for Writ of Error.

Comes now Romana Gauzon, defendant and appellant in the above entitled cause, and says that due to the equitable nature of her defense in this case she has heretofore on the 22nd day of November, 1916, presented a petition for appeal to the Supreme Court of the United States, but that being in doubt as to whether her remedy is by appeal or writ of error, she also begs leave of Court to present this her petition for writ of error and says that on the 12th day of December, 1914, final judgment in this case was entered by this Court against said appellant; that said appellant was and is aggrieved in that, in said judgment and the proceedings had previous thereto in this case, certain errors were committed to her prejudice, all of which more fully appear in detail from the assignment of errors filed herewith; that in this case property exceeding in value the sum of $25,000.00 United States currency on said 12th day of December, 1914, is involved as shown by
477 the affidavits of said appellant and of Alberto Kappeler, Lope P. Severino, Rafael R. Alunan, Gil Montilla, George C. Sellner, Harold M. Pitt and others, which were filed with said petition for appeal and to which reference is hereby made as a part of this petition.

Wherefore, said appellant Romana Gauzon prays that a writ of error may issue to the Supreme Court of the Philippine Islands for the correcting of the errors complained of, and that a duly authenti-

cated transcript of the record, proceedings and papers herein may be sent to the United States Supreme Court.

Manila, P. I., December 1st, 1916.

GIBBS, McDONOUGH & BLANCO,
Attorneys for Appellant Romana Gauzon.

478 Supreme Court of the United States, — Term, 191—.

No. —.

R. G. No. 9349 of the Supreme Court of the Philippine Islands.

ROMANA GAUZON, Widow of Vega, Plaintiff in Error,

versus

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Defendant in Error.

Assignment of Errors.

Comes now Romana Gauzon, Plaintiff in Error in the above entitled cause, and avers and shows that in the record and proceedings in said cause, the Supreme Court of the Philippine Islands erred to the grievous injury and wrong of the plaintiff in error in the following particulars, to wit:

I.

The Supreme Court of the Philippine Islands erred as a matter of law in affirming the decision of the trial court decreeing registration in favor of the defendant in error of the hacienda San José proper of 465 hectares.

II.

The Supreme Court of the Philippine Islands erred as a matter of law in failing to find that the defendant in error was never the owner in fee simple of said hacienda San Jose proper of 465 hectares and that the plaintiff in error was and is the owner of the
479 right to redeem said hacienda duly recorded in the registry of property of Occidental Negros and still unexpired and uncancelled.

III.

The Supreme Court of the Philippine Islands erred as a matter of law in reversing the decision of the trial court denying the registration of the tract of 146 hectares adjoining said hacienda and in decreeing the registration thereof in favor of the defendant in error.

IV.

The Supreme Court of the Philippine Islands erred as a matter of law in finding that the tract of 146 hectares was included in the mortgage to the defendant in error of the hacienda San Jose.

V.

The Supreme Court of the Philippine Islands erred as a matter of law in finding that the tract of 146 hectares was included in the sheriff's sale of September 12, 1906, and in failing to accept as conclusive the sheriff's certificate of sale expressly limiting the tract sold to 465 hectares, 33 areas and 82 centiareas, the exact area of the hacienda San Jose proper.

VI.

The Supreme Court of the Philippine Islands erred as a matter of law in reversing its own finding in its first decision of February 10, 1912, in which it declared:

"We are satisfied, upon the whole case, that the clear weight of the evidence, in fact the overwhelming preponderance of the evidence, is in favor of the contention of the respondent that she has demonstrated a better right to the land in question than has the petitioner in this case."

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VII.

The Supreme Court of the Philippine Islands erred in finding in effect that the plaintiff in error was estopped by the theory of her defense on the original hearing from denying on the new trial that the tract of 146 hectares was included in the mortgage and the sheriff's sale.

VIII.

The Supreme Court of the Philippine Islands erred in not finding as a matter of law that the defendant in error by its own allegations and proofs to the effect that it acquired the tract of 146 hectares from one Andres Mondragon in hostility to the title of the plaintiff in error is estopped from now claiming that it derived such title from the plaintiff in error.

IX.

The Supreme Court of the Philippine Islands erred in finding that the plaintiff in error was not entitled under the law to redeem the hacienda San Jose proper of 465 hectares and to have such right of redemption registered as an incumbrance upon the title, if any, of the defendant in error to said hacienda.

X.

The Supreme Court of the Philippine Islands erred in finding that the plaintiff in error was not entitled under the law to redeem the entire tract of 611 hectares and to have such right of redemption registered as an incumbrance upon the title of the defendant in error, if any, to said hacienda.

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XI.

The Supreme Court of the Philippine Islands erred as a matter of law in failing to take into consideration and treat as res adjudicata the finding previously made by it in its decision of April 12, 1909 (13 P. R. 473-476), between the same parties to the effect that at the time of said sheriff's sale of September 12, 1906, the representative of the defendant in error who purchased the hacienda in question on its behalf, signed with the sheriff and four witnesses an official record of the sale in which it was recited that the plaintiff in error was granted a year within which to redeem said hacienda and that this record thus signed by the defendant in error as purchaser and the sheriff as vendor contained the terms of the contract of purchase and sale which were binding upon the parties.

XII.

The Supreme Court of the Philippine Islands erred as a matter of law in failing to find that the defendant in error by accepting the sheriff's certificate of sale of September 12, 1906, reserving to the plaintiff in error the right of redemption again consented to and confirmed its previous agreement to grant such right of redemption and thereby waived its right, if any, to an absolute title before the expiration of the term of redemption.

XIII.

The Supreme Court of the Philippine Islands erred in failing to find that the defendant in error by levying an attachment upon said right of redemption in a separate action against the plaintiff
482 in error for a deficiency judgment on account of the obligation secured by said mortgage, estopped itself from denying the existence of such right of redemption.

XIV.

The Supreme Court of the Philippine Islands erred in failing to take into consideration its previous final judgment of April 13, 1909, between the same parties (13 P. R. 484-485), holding that the defendant in error was estopped by having attached such right of redemption to deny its existence.

XV.

The Supreme Court of the Philippine Islands erred in failing to find that its own previous final judgment of April 13, 1909, between the same parties (13 P. R. 485-486), expressly suspending the term for said redemption from May 10, 1907, until the judgment in that case should become final, necessarily included within it a final adjudication of the existence of that right of redemption in favor of the plaintiff in error.

XVI.

The Supreme Court of the Philippine Islands erred in not holding as it did in said previous judgment of April 13, 1909, that the plaintiff in error's right of redemption "could not be exercised during the period of attachment and while the litigation was pending, by virtue of the principle that a prescriptive term shall not run against him who cannot act" (13 P. R. 485).

XVII.

The Supreme Court of the Philippine Islands erred in not
483 holding the defendant in error concluded and estopped by said previous final judgment of said court of April 13, 1909, declaring that the right of redemption of the plaintiff in error "could not be exercised during the period of attachment" (13 P. R. 485).

XVIII.

The Supreme Court of the Philippine Islands erred in finding that the sale of the property in question at auction by the sheriff divested the plaintiff in error of her title thereto and in failing to find that the decree of the Court of First Instance affirmed on appeal by said Supreme Court of the Philippine Islands on April 12, 1909, (13 P. R. 474-476), expressly confirming such sale in accordance with the terms of the record of the auction sale subscribed by the defendant in error as purchaser and the sheriff's certificate of sale of September 12, 1906, constituted a final adjudication to the plaintiff in error of such right of redemption.

XIX.

The Supreme Court of the Philippine Islands erred in finding that "strictly speaking the respondent does not oppose the registration of the title of the plaintiff in and to the hacienda San Jose proper, but asks merely that it be registered subject to her alleged right of redemption". (First decision of February 10, 1912, and last decision of November 20, 1914.)

XX.

The Supreme Court of the Philippine Islands erred in fail-
484 ing to make any finding in its last decision of November 20, 1914, as to the right of redemption of the plaintiff in error

after having wholly set aside its previous decision of February 10, 1912, on that subject.

XXI.

The Supreme Court of the Philippine Islands erred in failing to find that the defendant in error by electing to collect its judgment by an ordinary execution and by levying execution of such judgment on personal property of the plaintiff in error not covered by said mortgage and selling the same, subjected itself to the obligation of recognizing and estopped itself from denying the plaintiff in error's right of redemption as provided by the Code of Civil Procedure in such executions.

Wherefore, for these and other manifest errors appearing in the record, the said Romana Gauzon, Plaintiff in Error, prays that the judgment of the said Supreme Court of the Philippine Islands be reversed and set aside, and held for naught, and that judgment be rendered for plaintiff in error, granting her her rights in accordance with the laws of the Philippine Islands and of the United States, and plaintiff in error also prays judgment for her costs.

Manila, Philippine Islands, December 1st, 1916.

(Sgd.) ALLISON D. GIBBS,
Attorney for Romana Gauzon,
Plaintiff in Error.

Address: 9 Plaza Moraga, Manila, Philippine Islands.

485 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner and Appellant,

versus

ROMANA GAUZON, Objector and Appellant.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing four hundred eighty-four (484) typewritten pages (composed of two parts) contain a true and correct translation and transcript of the record and proceedings in the Court of Land Registration and in the Supreme Court of the Philippine Islands in the case of the Compañia General de Tabacos de Filipinas vs. Romana Gauzon, bearing No. 9349 on the docket of this Supreme Court.

In witness whereof, I hereunto set my hand and affix the seal of

the Supreme Court of the Philippine Islands this 31st day of January, A. D. 1917.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

ar.

486 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

File No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Petitioner and Appellant,

versus

ROMANA GAUZON, Objector and Appellant.

Judgment.

December 12, 1914.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 20th day of November, A. D. nineteen hundred and fourteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of Land Registration, dated the 30th day of April, nineteen hundred and thirteen, and from which the above-entitled appeal was taken, be, and the same is hereby modified and the court is ordered to decree the registration of all land described in the application.

It is further ordered that * * * recover from * * * the sum of P—, as costs.

[Seal Corte Suprema, Islas Filipinas.]

(Sgd.) V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

Certified correct:

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

ar.

487 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorables the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in said Court before you on December 12, 1914, between La Compañia General de Tabacos de Filipinas, petitioner, and Romana Gauzon, respondent, being Docket No. 9349 of the Supreme Court of the Philippine Islands, wherein the property involved exceeded $25,000.00, United States currency, on the date of said judgment, manifest errors are alleged to have been committed to the great damage of the said Romana Gauzon as by her petition and assignment of errors appear.

We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same in the City of Washington, D. C., within one hundred and twenty days from the date hereof, in said
488 Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done to correct that error what of right, and according to the laws and custom of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this fifth day of December, A. D. one thousand nine hundred and sixteen.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

ar.

489 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

Allowance of Appeal.

Ramona Gauzon, the defendant and appellant in the above-entitled case, having on the 22nd day of November, 1916, filed and presented to the undersigned her petition praying for an appeal intended to be urged by her; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered may be sent to the Supreme Court of the United States; and that such further and other proceedings may be had in the premises as may — just and proper; and upon consideration of said petition and upon reading and hearing the objections of the plaintiff company to the appeal and the affidavits and counter-affidavits respecting the value of the matter in dispute, the undersigned finds that the amount involved between the parties on the 12th of December, 1914, the date of the judgment of
490 this Court, was clearly in excess of $25,000, U. S. currency, and desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions proper to be there presented, it is ordered by the undersigned that an appeal be allowed as prayed; provided, however, that said petitioner, Romana Gauzon, give bond with good and sufficient surety in the sum of $500, U. S. currency, to prosecute the said appeal to effect and answer all damages and costs if she fails to make good her plea.

Let a certified copy of the records, testimony and all proceedings herein be transmitted forthwith to said Supreme Court of the United States.

Manila, P. I., December 5, 1916.

[Seal Corte Suprema, Islas Filipinas.]

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

ar.

491 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Defendant in Error,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants; Romana Gauzon Viuda de Vega, Defendant and Plaintiff in Error.

Allowance of Writ of Error.

Romana Gauzon, the appellant in the above-entitled case, having on the 1st day of December, 1916, filed and presented to the undersigned her petition praying for a writ of error intended to be urged by her; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered may be sent to the Supreme Court of the United States; and that such further and other proceedings may be had in the premises as may be just and proper; and upon consideration of said petition and upon reading and hearing the objections of the plaintiff company to the appeal and the affidavits and counter-affidavits respecting the value of the matter in dispute, the undersigned finds
that the amount involved between the parties on the 12th of
492 December, 1914, the date of the judgment of this Court, was clearly in excess of $25,000.00, United States currency, and desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions proper to be there presented, it is ordered by the undersigned that a writ of error be allowed as prayed; provided, however, that said petitioner, Romana Gauzon, give bond according to law for the sum of $500.00, United States currency, to pay costs.

In testimony whereof I witness my hand at Manila, P. I., this 5th day of December, 1916.

[Seal Corte Suprema, Islas Filipinas.]

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

ar.

493 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Supreme Court, Philippine Islands. Clerk's Office. Islands, Dec. 5, 1916, 4 o'clock.

R. G. No. 9349.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee.

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

Costs Bond.

Know all men by these presents that we, Romana Gauzon Viuda de Vega, as principal, and A. D. Gibbs and W. Kennedy, of the City of Manila, as sureties, are held and firmly bound unto the plaintiff herein, Compañía General de Tabacos de Filipinas, in the sum of Five Hundred Dollars ($500), United States currency, to be paid to the said obligee, its successors, representatives and assigns, to the payment of which well and truly to be made we bind ourselves, our heirs, successors and administrators, jointly and severally by these presents.

Signed by us at Manila, P. I., this 5th day of December, A. D. 1916.

[Seal J. E. Blanco, Manila, Philippine Islands.]

———.

Whereas, lately, in the Supreme Court of the Philippine Islands, on the 12th day of December, 1914, in a suit pending in said Court, between the Compañía General de Tabacos de Filipinas, plain-
494 tiff and appellee, and Romana Gauzon Viuda de Vega, defendant and appellant, a decree was rendered against the said Romana Gauzon Viuda de Vega, and the said Supreme Court of the Philippine Islands having allowed an appeal to the Supreme Court of the United States:

Now, therefore, the condition of the above obligation is such that if the said defendant and appellant Romana Gauzon Viuda de Vega shall prosecute said appeal to effect and answer all damages and costs if she fails to make good her appeal, then this recognizance shall be null and void; otherwise, to remain in full force and effect.

ROMANA GAUZON, *Principal.*
A. D. GIBBS, *Surety.*
W. KENNEDY, *Surety.*

Signed in the presence of:

[Seal J. E. Blanco, Notary Public, Manila, Philippine Islands.]

L. A. BARRETTO.
ROMAN OZAETA.

495 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

A. D. Gibbs and W. Kennedy, the sureties who executed the foregoing bond, being first duly sworn upon oath, each for himself says and deposses: That he is a resident and property holder in the Philippine Islands; that he is solvent for the amount stated in said obligation, apart from all his debts and obligations and property not subject to execution; and that he executed the foregoing bond as an act of his own free will and deed.

W. KENNEDY.

A. D. GIBBS.

Subscribed and sworn to before me this 5th day of December, 1916, at Manila, P. I. Affiants exhibited to me their personal cedulas, as follows: A. D. Gibbs, cedula No. F-20940, issued by the Collector of Internal Revenue at Manila, on the 15th day of February, 1916; and W. Kennedy, cedula No. F-1728, issued by the Collector of Internal Revenue at Manila, on the 3rd day of January, 1916.

[Seal J. E. Blanco, Notary Public, Manila, Philippine Islands.]

J. E. BLANCO,
Notary Public.

My commission expires December 31, 1916.
Doc. No. 160.
Page 84.

The foregoing bond is hereby approved.
Manila, P. I., December 6, 1916.

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

496 THE UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

Supreme Court, Philippine Islands. Clerk's Office, Dec. 6, 1916, 8.45.

R. G. No. 9349.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Defendant in Error,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC Lands, Defendants; Romana Gauzon Viuda de Vega, Defendant and Plaintiff in Error.

Costs Bond.

Know all men by these presents that, we, Romana Gauzon Viuda de Vega, as principal, and A. D. Gibbs and W. Kennedy, of the City of Manila, as sureties, are held and firmly bound unto the plaintiff herein, Compañía General de Tabacos de Filipinas, in the sum of Five Hundred Dollars ($500), U. S. currency, to be paid to the said obligee, its successors, representatives and assigns, to the payment of which well and truly to be made we bind ourselves, our heirs, successors and administrators, jointly and severally by these presents.

Signed by us at Manila, P. I., this 5th day of December, A. D. 1916.

Whereas, lately, in the Supreme Court of the Philippine Islands, on the 12th day of December, 1914, in a suit pending in said Court, between the Compañia General de Tabacos de Filipinas, plaintiff and appellee, and Romana Gauzon Viuda de Vega, de-
497 fendant and appellant, a decree was rendered against the said Romana Gauzon Viuda de Vega, and the said Supreme Court of the Philippine Islands having allowed a writ of error to the Supreme Court of the United States:

Now, therefore, the ondition of the above obligation is such that if the said plaintiff in error Romana Gauzon Viuda de Vega shall prosecute said writ of error to effect and answer all damages and costs, if she fails to make good said writ of error, then this recognizance shall be null and void; otherwise, to remain in full force and effect.

ROMANA GAUZON (*Principal*).
A. D. GIBB (*Surety*).
W. KENNEDY (*Surety*).

Signed in the presence of:
L. A. BARRETTO.
ROMAN OZAETA.

498 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

A. D. Gibbs and W. Kennedy, the sureties who executed the foregoing bond, being first duly sworn upon oath, each for himself deposses and says: That he is a resident and property holder in the Philippine Islands; that he is solvent for the amount stated in said obligation, apart from all his debts and obligations and property not subject to execution; and that he executed the foregoing bond as an act of his own free will and deed.

W. KENNEDY.

A. D. GIBBS.

Subscribed and sworn to before me this 5th day of December, 1916, at Manila, P. I. Affiants exhibited to me their personal cedulas, as follows: A. D. Gibbs, cedula No. F-20940, issued by the Collector of Internal Revenue at Manila, on the 15 day of February, 1916; and W. Kennedy, cedula No. F-1728, issued by the Collector of Internal Revenue at Manila, on the 3 day of January, 1916.

[Seal J. E. Blanco, Notary Public, Manila, Philippine Islands.]

J. E. BLANCO,
Notary Public.

My commission expires December 31, 1916.
Doc. No. 161.
Page 84.

The foregoing bond is hereby approved.
Manila, P. I., December 6, 1916.

SHERMAN MORELAND.
Associate Justice of the Supreme Court of the Philippine Islands.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Appellee,

versus

OMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants and Appellants.

Citation.

he President of the United States to the "Compañía General de Tabacos de Filipinas" and to its Attorneys, Messrs. Gilbert, Cohn & Fisher, Manila, P. I., Greeting:

You are hereby cited and admonished to be and appear at the upreme Court of the United States of America, at the City of Washgton, D. C., within one hundred and twenty days from the date reof pursuant to an appeal duly allowed by the Supreme Court of e Philippine Islands and filed in the Clerk's Office of said Court, a cause wherein you are plaintiff and appellee and Romana Gauzon defendant and appellant, to show cause, if any, why the decree rendered against said defendant and appellant, as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of e Supreme Court of the United States, this 6th day of December, D. 1916.

[Seal Corte Suprema, Islas Filipinas.]

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

ar.

Service of a copy of the within citation is hereby admitted, this 6 y of December, 1916.

GILBERT, COHN & FISHER,
p. p. CHARLES C. COHN,
Attorneys for Compañía General de Tabacos de Filipinas.

501 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS, Plaintiff and Defendant in Error,

versus

ROMANA GAUZON, Viuda de Vega, and THE DIRECTOR OF PUBLIC LANDS, Defendants; Romana Gauzon Viuda de Vega, Defendant and Plaintiff in Error.

Citation.

The President of the United States to the Compañía General de Tabacos de Filipinas and to Its Attorneys, Messrs. Gilbert, Cohn & Fisher, Manila, P. I., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty days from the date hereof pursuant to a writ of error duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's Office of said Court on the 1st day of December, 1916, in a cause wherein Romana
502 Bauzon Viuda de Vega is plaintiff in error and you are defendant in error, to show cause, if any, why the decree rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 6th day of December, A. D. 1916.

[Seal Corte Suprema, Islas Filipinas.]

SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

ar.

Service of a copy of the within citation is hereby admitted, this 6th day of December, 1916.

GILBERT, COHN & FISHER,
p. p. CHARLES C. COHN,
Attorneys for Compañía General de Tabacos de Filipinas, Defendant in Error.

503 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 9349.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, Applicant and Appellant,

versus

ROMANA GAUZON, Opponent and Appellant.

Stipulation.

It is hereby stipulated that the foregoing is a true and complete copy and translation of all the record, proofs, and proceedings essential for a review of the above-entitled case by the Supreme Court of the United States, either upon appeal or writ of error, counsel for applicant and appellant reserving the right to object to the inclusion in the printed record of the evidence on the trial and of the affidavits as to the amount in controversy as immaterial and redundant.

Manila, P. I., January 29th, 1917.

GIBBS, McDONOUGH & BLANCO,
A. D. GIBBS,
Attorneys for Objector and Appellant.

GILBERT, COHN & FISHER,
CHARLES C. COHN,
Attorneys for Applicant and Appellant.

Endorsed on cover: File No. 25,818. Philippine Islands, Supreme Court. Term No. 988. Romana Gauzon, appellant and plaintiff in error, vs. Compañía General de Tabacos de Filipinas. Filed March 12th, 1917. File No. 25,818.

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SUPREME COURT, U. S.
FILED
SEP 5 1917
JAMES D. MAHER
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

ROMANA GAUZON,
Appellant and plaintiff in error,
v.
COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Appellee and defendant in error.
No. 437

MOTIONS TO DISMISS OR AFFIRM.

BRIEF FOR APPELLEE.

(25818)

PRESS OF GIBSON BROS., INC., WASHINGTON, D. C.



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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

ROMANA GAUZON,
Appellant and plaintiff in error,
v.
COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS,
Appellee and defendant in error.

No. 437

NOTICE AND SERVICE.

To Romana Gauzon, and to Messrs. Britton & Gray, her attorneys.

You will please take notice that the appellee and defendant in error in the above entitled cause will at motion hour on October 15 1917, move the Court at its court room in Washington, D. C.:

1. To dismiss the appeal herein, with costs, for want of jurisdiction; and

2. To dismiss the writ of error herein, for want of jurisdiction; or

3. To affirm the judgment of the court below upon the ground that it is manifest that the appeal was taken and the writ of error sued out for delay only, and that the questions presented are too frivolous to require further argument.

The said motions will be made upon the motion papers and briefs hereto attached.

Signed at Washington, D. C., this 1st day of August, 1917.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS,
By F. C. FISHER, *Attorney.*

Service of copies of the above notice, of the motions therein referred to, and appellee's brief in support thereof are hereby accepted at Washington, D. C., this 28 day of August, 1917.

(Sgd.) ALEX BRITTON
" EVANS BROWNE

Counsel for appellant and plaintiff in error.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

ROMANA GAUZON,
Appellant and plaintiff in error,
v.
COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS,
Appellee and defendant in error.

No. 437

MOTION TO DISMISS.

Comes the appellee and defendant in error and moves the Court:

1. To dismiss the appeal herein from the judgment of the Supreme Court of the Philippine Islands, with costs, because the proceeding wherein said judgment was rendered was a statutory proceeding under Act 496 of the Philippine Commission for the registration of title to real estate, reviewable only by writ of error; and

2. To dismiss the writ of error herein, sued out to review the judgment of the Supreme Court of the Philippine Islands, for want of jurisdiction, because the jurisdictional amount is not involved; or

3. If said motions be overruled, then appellee and defendant in error moves the court to affirm the said judgment, with costs, because it is manifest that the questions on which the said appeal and writ of error were taken are so frivolous as not to need further argument, and because it is also manifest that said appeal and writ of error were taken for delay only.

F. C. FISHER,
Counsel for appellee and defendant in error.

WASHINGTON, D. C., *August 1, 1917.*

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

ROMANA GAUZON,
Appellant and plaintiff in error,

v.

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS,
Appellee and defendant in error.

No. 437

BRIEF FOR APPELLEE AND DEFENDANT IN ERROR ON MOTIONS TO DISMISS.

May it please the Court:

We shall refer to the appellant and plaintiff in error as the appellant and to the Compañía General de Tabacos de Filipinas as the Company.

STATEMENT OF THE CASE.

This case was commenced in the Philippine Court of Land Registration by a petition by the Company for the registration of title to a tract of land in Negros Occidental, P. I. The petition was opposed by the Insular Government and by Doña Romana Gauzon, who now appeals from the judgment of the Supreme Court, decreeing registration of the Company's title.

STATEMENT OF THE FACTS.

The land in question was formerly the property of the appellant, and was by her mortgaged to the Company. (Rec., p. 17, Ans. of Appellant.) In September, 1905, the Company brought suit to foreclose its mortgage. A receiver was appointed to hold the mortgaged property during the pendency of the proceedings. On April 6th, 1906, the Court of First Instance gave judgment in favor of the Company for ₱58,687.03, with interest at ten per cent per annum from July 15th, 1905, until paid, for ₱1,500 as costs, and decreed the foreclosure sale of the mortgaged property in the event of failure to pay the judgment. (Exhibit G, Rec., p. 38.) The property, upon the foreclosure sale, was bid in by the Company for ₱64,326.92, including certain machinery, this being somewhat less than the amount of the judgment and costs, with accrued interest, on September 6, 1906, the date of the foreclosure sale. (Ex. 6, Rec., p. 8-9.) In the certificate of sale (Ex. 6, Rec., p. 8) the Sheriff inserted a clause to the effect that the mortgagor should have a year in which to redeem the property. In March, 1907, the Company instituted another suit against Doña Romana Gauzon, and took out a writ of preliminary attachment, under which a levy was made upon the so-called "right of redemption" of the property sold under foreclosure. This levy was made in March, 1907. In that suit judgment was rendered in favor of the Company against Doña Romana Gauzon for the payment of ₱7,838.62, with interest at 10 per cent per annum. The Court directed (Exhibit 9, Rec., p. 48) that this amount should be offset by certain revenues obtained from the Hacienda San Jose during the receivership, as to which the receiver was directed to render an account. The Court further ordered that no execution should issue on the judgment until after the

receiver's accounts had been filed and approved, and that—

> by virtue of the attachment of the right of repurchase of the defendant on the Hacienda San Jose, the period of the repurchase is suspended until this judgment becomes final, such suspension to be understood as being effective from May 10th last.

The Company appealed from this judgment to the Philippine Supreme Court, but it was affirmed on April 13, 1909, the Court expressly declining to decide whether a right of redemption exists in such cases or not.

Rec., p. 50.

The case was thereupon remanded to the trial court, which, by order dated November 27, 1911 (while the proceedings in the Land Court were still pending), declared that the attachment as to the so-called right of redemption had "ceased to be effective."

Par. i, Amended Opposition, Rec., p. 143.

In January, 1912, the appellant Gauzon filed a complaint against the Company (Ex. Z 2, Rec., p. 146) in which it is alleged that on December 6, 1911, the said appellant demanded of the Company a statement of the receipts and disbursements connected with the hacienda during the time it was in the possession of the Company, and that the Company refused and failed to give such statement. The Company filed its answer to the said complaint, expressly denying these averments (Ex. Z 3, Rec., p. 147). No trial of this case has been had (ex. Z 1, Rec., p. 145).

After the foreclosure sale the Company went into possession of the property in question and some time after caused it to be surveyed with a view to the registration of the title under the provisions of Act 496 of the Philippine Commission, known as the Land Registration Act. The survey disclosed that the area of the property within

the metes and bounds given in the title papers was some 602 hectares, an excess of some 137 hectares over the area mentioned in the deeds.

In March, 1910, the Company filed its petition for the registration of the property (Printed Record, p. 1). The petition stated that the title for which registration was sought was derived by the Company from the foreclosure of its mortgage thereon, and the purchase of appellant's title at the foreclosure sale, and was accompanied by documents showing the original grant of the land to appellant by the Spanish Government (Exhibit 3, Rec., p. 3) and the transfer of her title to the Company through the foreclosure proceedings.

The petition was opposed by the Attorney General, on behalf of the Insular Government, upon the ground that (Rec., p. 15) the area of the property described in the petition and the survey was in excess of that stated in the deed from the Spanish crown. The judge of the Court of Land Registration held that the description of the land by metes and bounds in the grant was controlling, and decreed title to the entire area disclosed by the survey.

Decision, trial court, Rec., p. 123.

No appeal was taken by the Insular Government from this decision.

Record, p. 128.

The petition was also opposed by the appellant Gauzon, upon the ground that she was entitled to redeem the property. Her contention was that the right to redeem was conferred by the clause of redemption included in the Sheriff's deed on the foreclosure; that the time for redemption was one year from that date; that the attachment of the "right of redemption" in the second suit against her by the Company had stayed the running of the redemp-

tion period; that the registration of the title should be made subject to this alleged right of redemption.

Original opposition paper, Rec., p. 19.

The judge of the Court of Land Registration decided (Rec., p. 123) that no right of redemption exists after foreclosure and confirmation of the sale by the court, and directed that petitioner's title be registered free from the alleged right of redemption asserted by the appellant Gauzon. She appealed from this decision to the Supreme Court of the Philippine Islands. Her brief on that appeal (Exhibit Z-c, Rec., pages 153 to 170, inclusive) was devoted entirely to a discussion of the supposed error of the lower court in refusing to recognize the alleged right of redemption.

During the pendency of the foreclosure proceedings one Mondragon, who claimed adversely to Gauzon and the Company with respect to a tract of some 137 hectares within the tract which the Company sought to register, sold his interest in that tract, whatever it might be, to the Company, and this quit claim deed (Decision below, Rec., p. 211) was put in evidence at the trial, together with the title acquired by the foreclosure proceedings. The Supreme Court, in reviewing the evidence on the first appeal, got the impression that this 137 hectares was not included in the mortgage to the Company, and concluded that as between the appellant, Gauzon, and Mondragon, the title of the former was superior, she having shown conclusively at the trial that the persons under whom Mondragon claimed were tenants of hers. Acting under this erroneous impression the Court (Rec., p. 129 *et seq.*) made its order for judgment (Rec., p. 136), directing that—

> * * * the judgment appealed from be affirmed in so far as it decrees the registration of the title to the Hacienda San Jose proper, containing 465 hectares, 33 ares and 82 centiares, free from the equity of re-

> demption and is hereby reversed and set wholly aside in so far as it registers in favor of petitioner title to the parcel containing 137 hectares, 42 ares, and 83 centiares.

Upon the rendition of this decision a petition for a rehearing was promptly filed on behalf of the Company, the result of which was that the Court, by a *per curiam* order (Rec., p. 136 to 139, inc.), directed the return of the case to the lower tribunal for a new trial. In that order it is stated that although the appellant Gauzon—

> in this Court as well as in the lower court apparently does not dispute the allegations of the petitioner that the mortgage included the 137 hectares as well as the 465 hectares,

it is probable that she intended to claim the 137 hectares and would have done so had it not been for the proof offered by the Company regarding the Mondragon deed.

Acting upon the suggestion contained in this order of the Supreme Court, the appellant Gauzon, upon the return of the record to the Court of Land Registration, promptly filed an amended opposition (Rec., pp. 141 to 144, inc.), in which she laid claim, for the first time, to the excess of 137 hectares as not having been included in the mortgage, and testified in support of her new position at the hearing (Rec., p. 195).

During the pendency of the appeal to the Supreme Court against the first decision the Court of First Instance had declared that the attachment levied upon the so-called "right of redemption" had "ceased to be effective." (*ante*, p. 7). The amended opposition filed after the return of the record for the new trial contained averments regarding the dissolution of this attachment, and the commencement by appellant as plaintiff of an action against the Company based upon the alleged refusal of the latter to comply with the demand for an accounting.

Amended opposition, par. i, Rec., p. 143.

The judge of the Court of Land Registration before whom the case was reheard, although stating in his decision (Rec., p. 205) that—

> the position taken by Romana Gauzon at the original trial was markedly inconsistent with that she took at the new trial,

held that the title to the 136 hectares of excess area was not covered by the Spanish grant, and that neither Gauzon nor the Company had shown title thereto. The claim of Gauzon of a right to redeem the 465 hectares was denied and a decree for its registration in favor of petitioner entered.

From this decision both parties appealed to the Supreme Court of the Philippines. On the appeal Gauzon contended that the 137 hectares was not included in the mortgage and that she was entitled to redeem as to the 465 hectares. The Supreme Court affirmed its former rulings to the effect that there is no right of redemption after foreclosure (Resolution of December 10, 1914, Rec., p. 216) and held that the evidence showed, as contended by the Company, that the entire area of the tract in dispute was covered by the mortgage (Rec., pp. 210 to 213, inc.).

(a) **The motion to dismiss the appeal.**

POINT ONE.

AN APPEAL WILL NOT LIE TO REVIEW A JUDGMENT OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS RENDERED IN A PROCEEDING ORIGINATING IN THE PHILIPPINE COURT OF LAND REGISTRATION.

The appeal in this case, having been taken in December, 1916, is governed by the provisions of section 27 of the Act of August 29, 1916, which is a reenactment in identic terms of Sec. 248 of the Judicial Code, which, with but one unimportant change, is the same as Sec. 10 of the Philippine Bill (Act of Congress of July 1st, 1902).

This Court has frequently held that an appeal will not lie in cases involving a review of proceedings for the registration of title to land under the Philippine Land Registration Act.

The first case in which the question was considered is Cariño *v.* the Insular Government of the Philippine Islands (205 U. S. 403; 53 L. Ed. 594), in which it was contended on behalf of the Insular Government that the case should have been brought up by appeal, and that the writ of error should be dismissed. The Court said (p. 456):

> The government has spent some energy in maintaining that this case should have been brought up up by appeal and not by writ of error. We are of the opinion, however, that the mode adopted was right. The proceeding is likened to bills in equity to quiet title, but it is different in principle. It is a proceeding *in rem* under a statute of the type of the Torrens act, such as was discussed in Tyler *v.* Registration Court Judges, 175 Mass. 71. It is nearer to law than to equity and is an assertion of legal title; but we think it unnecessary to put it into either pigeon hole. A writ of error is the general method of bringing cases to this court, an appeal the excep-

> tion, confined to equity in the main. There is no reason for not applying the general rule to this case.

This ruling was followed in the case of Tiglao *v.* Insular Government of the Philippine Islands (215 U. S. 410; 54 L. Ed. 257), in which it was said:

> This case comes by writ of error and appeal from a judgment of the Supreme Court of the Philippine Islands, affirming a judgment of the Court of Land Registration which denied registration of a tract of land. It is admitted that the facts as found by the two courts may be assumed to be true; but apart from the concurrence of the courts below the proper proceeding in cases of this kind is by writ of error, and therefore the appeal is dismissed (Cariño *v.* Insular Government, 212 U. S. 449).

Again, in the case of Jover y Costas *v.* Insular Government (221 U. S. 623; 55 L. Ed. 884) the appeal was dismissed in a case coming from the Philippine Court of Land Registration, and the ruling that the proper proceeding is by writ of error was again affirmed.

Section 4 of the Act of Congress of September 6, 1916, entitled "An Act to Amend the Judicial Code, etc.," does not abolish the distinction between writs of error and appeals, or require or empower the Court to review the evidence in all cases. If the Act were applicable, and an appeal only had been taken, the Court would not dismiss the appeal, but would limit its review to the law points involved, which, in this case, are presented by the writ of error, if it was properly allowed.

But the Act of Congress of September 6, 1916, is not applicable to this case. Section 7 of that Act provides that—

> * * * the right of review *under existing laws* in respect of judgments and decrees entered before this Act took effect shall remain unaffected for the period of six months thereafter.

(b) **The motion to dismiss the writ of error.**

POINT TWO.

THE JURISDICTIONAL AMOUNT OF TWENTY-FIVE THOUSAND ($25,000.00) DOLLARS IS NOT INVOLVED.

Jurisdiction to entertain the writ of error in cases of this kind coming from the Philippine Supreme Court, no Federal question being presented by the assignments of error, is limited to actions in which the value in controversy exceeds twenty-five thousand dollars, or which involve the title or possession of real estate exceeding in value that amount.

Plaintiff in error has endeavored to make it appear that the jurisdictional amount is involved, but we believe that the record shows that her estimates are grossly exaggerated, solely to give color to this prolongation of the litigation.

The proceeding commenced by petition by the Company for the registration of title to a tract of land containing 602 hectares and a fraction, the averment in the pleading being that title to this property was acquired (Par. 4 of Petition, Rec., p. 1) by purchase at public auction had in foreclosure proceedings instituted against Romana Gauzon, "the original owner of the property in question."

The appellant Gauzon filed a written opposition to this petition upon the sole ground that she was entitled to have her alleged equity of redemption noted on the record (Answer, Rec., p. 17 to 20, inc.). The original trial was limited to this issue of law (Statement, *ante*, pp. 6 to 8). It was not until the case was remanded for a new trial, due to the misunderstanding by the appellate court of the issues involved, that appellant made her claim that 137 hectares of the tract was not covered by the mortgage (Amended answer, Rec., pp. 141-144). Taken in its

most favorable light, therefore, the issues presented by this pleading involved,

(*a*) The alleged right to redeem some 465 hectares, and

(*b*) The title to some 137 hectares.

In the petition for the registration of the title of the Company to the whole tract of 602 hectares and a fraction, the averment is made that the land was assessed for taxation at $16,950, U. S. currency, and the buildings at $2,250, U. S. currency. The petition was accompanied by the tax declaration made under oath by appellant's agent (Rec., p. 11), showing that the property—land and improvements—was worth ₱38,050.

These averments of value were necessary. They are required by the statutory form of petition in land registration cases (Act 496, Phil. Comm., Sec. 21), the purpose being to enable the Court to determine the amount to be assessed against the property for the benefit of the title insurance fund (Act 496, Sec. 99). They were not controverted by the pleadings filed by the appellant at the first trial (Rec., p. 17), or the second (Rec., p. 141). Under the law in force at the time the declaration was made (Act 82, Phil. Comm., Sec. 50) land was required to be assessed for taxation at its "true value in money."

It is evident, therefore, that the value of the entire tract at the time the proceeding commenced was less than $20,000, as shown by the sworn statement of appellant's agent, not controverted by her.

We submit that the value upon which the jurisdiction of the Court depends in cases of this kind is the value at the time of the institution of the proceeding. Unless that criterion be adopted, the jurisdiction of the Court would depend upon the fluctuations of the real estate market during the pendency of the proceedings. The appeal in this case was taken over a year and eleven months after the date of the rendition of the decision.

Assuming that the value of land in Negros increased during that period, will it be contended that if the jurisdictional value did not exist at the time of the rendition of the judgment, the jurisdiction might be conferred by a subsequent rise in real estate values?

In Red River Cattle Co. *v.* Needham (137 U. S. 632) it was held that—

> Where the demand is not for money, but the nature of the action requires the value of the thing demanded to be stated in the pleadings, affidavits will not be received here to vary the value as appearing upon the face of the record.

In that case, as in this, defendant did not controvert the averments of the pleadings as to the value of the real estate involved, but filed affidavits that the value was greater *after* judgment was entered for plaintiff.

In her affidavit in support of her appeal (Rec., p. 223), dated December 31, 1916, the appellant Gauzon says that the land in question was worth in the market in 1906 approximately ₱250,000. If that statement is true, then the appellant was guilty of a deliberate swindle in declaring this property for taxation in 1906 as being worth only ₱38,050. The difference of over ₱210,000 is too great to be accounted for by any misunderstanding. The tax declaration was made under a statute which required the full value to be declared.

A similar declaration, for the benefit of the Government, was required in the petition for the registration of the title. To the original proceeding the Government, represented by the Attorney General, was a party. If the petitioner was really attempting to defraud the insurance fund out of nine-tenths of the amount due, it is to be assumed that the law officer of the Government would have taken steps to oppose such a swindle.

The Court will further note that the tax declaration made on appellant's behalf in May, 1906 (Rec., p. 11), was not accepted by the assessors, and that the municipal board of tax assessors of San Carlos, Negros Occidental, sworn to assess the real estate in the municipality at its real value (Act 82, Sec. 50) assessed this property at ₱46,750. Evidently appellant was dissatisfied with this assessment, for the record shows (Rec., p. 12) that an appeal was taken to the provincial board of tax appeals, by which the land and improvements were assessed at ₱39,400. Finally, in March, 1910, three days before the petition for registration was filed, the Central Equalizing Board valued the land and improvements at ₱44,880 (Rec., p. 12) and the same valuation was placed on it by the Provincial Assessor in the valuation for 1914, the year when the judgment below was rendered (Rec., p. 233).

This shows that in three different administrative inquiries into the value of this land conducted between 1906 and 1914 by sworn assessors, the maximum valuation placed on the whole property was less by over $2,500 than the jurisdictional amount of $25,000.00.

If the land was worth ₱250,000 in 1906, as now contended by appellant, and as stated in her affidavit and that of [illegible]. Kappler (Rec., p. 226) then we must of necessity conclude that all the boards of assessment and equalization by which the land was successively appraised were composed of men wholly lacking in intelligence, and devoid of integrity. We believe that the Court will incline to give credence to these sworn and disinterested officials, rather than to this appellant, who stands convicted by the decisions of the trial court (Rec., p. 205) and of the Philippine Supreme Court (Rec., p. 213), taking "markedly inconsistent" positions and of a "change of front."

The positive averment is contained in the affidavit of Messrs. Las Heras, Correa and Malvehey (Rec., p. 233), that before the property in question was bought in at foreclosure it was offered publicly for sale, with the consent of appellant, for P50,000, without bidders; that the land was bid in by the Company at the foreclosure sale for P65,000-odd, without competition on the part of third persons. In her counter affidavit the appellant (Rec., p. 239) says she believes the statement by Messrs. Las Heras, Correa and Malvehey regarding their efforts to sell the property for P50,000 to be untrue, but does not deny the statement that she consented to its sale at that price (Rec., p. 233).

From a perusal of the affidavits it is quite apparent that since the establishment of a sugar mill at San Carlos, the value of sugar land in that vicinity has greatly increased, particularly in 1915 and 1916, owing to the prevailing high price of sugar (Rec., p. 445). The speculative nature of this appeal, taken at the eleventh hour, nearly two years after the mandate had been returned to the trial court (Rec., p. 217), is convincingly shown by these affidavits, and particularly by the statement at the end of appellant's affidavit of November 22, 1916 (Rec., p. 224).

The Court will note that the affidavits filed on behalf of appellant regarding value relate only to 1906—as to which period they are clearly grossly exaggerated—and to the time at which the petition for the writ was filed. If the Court should hold, following Street *v.* Ferry, 119 U. S. 385, that the value is to be determined as of the date of the judgment—November, 1914—it will be found that there is no statement in appellant's affidavits directly relating to that time, by any person claiming specific knowledge of the property in dispute. Messrs. Sellner and Pitt (Rec., pp. 240–244, inc.), in their affidavits on behalf of appellee, speak in general terms, without pre-

tending to know anything at all about the particular land in dispute.

The amount for which judgment was rendered upon the obligation secured by the mortgage was P58,687.03, with interest from April 6, 1906, at ten per cent per annum, compounded annually. If appellant had indeed been entitled to redeem as of the date of the judgment denying her contention in that regard, the value of the property was less then than the amount payable. The value of the right to redeem is clearly only the difference between the amount to be paid and the value of the property to which the alleged right of redemption attaches.

CONCLUSION.

We submit that upon the grounds advanced the appeal and the writ of error should be dismissed, with costs.

Respectfully submitted,

F. C. FISHER.

Counsel for appellee and defendant in error.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

ROMANA GAUZON,
Appellant and plaintiff in error,

v.

No. 437

COMPAÑÍA GENERAL DE TABACOS DE FILIPINAS,
Appellee and defendant in error.

BRIEF OF APPELLEE AND DEFENDANT IN ERROR ON MOTION TO AFFIRM.

If it should be the judgment of the Court that the motions to dismiss herewith submitted are not well taken, we submit that the judgment below should be affirmed upon the ground that it is manifest that the appeal was taken and the writ of error sued out for delay only, and that the questions presented are so frivolous as not to need further argument.

POINT ONE.

THE FINDING OF THE LOWER COURT, THAT ALL THE LAND TO WHICH THE JUDGMENT RELATES WAS INCLUDED IN THE MORTGAGE, IS NOT OPEN TO FURTHER DISCUSSION.

The specific finding in the judgment below is as follows:

> In the registration proceedings two parties appeared as respondents—the Government of the Philippine Islands and Romana Gauzon. The former opposed the registration on the ground that the Com-

pany and its predecessors in interest had title only to 465 hectares, 33 ares, and 82 centiares of the land described in the application and that the balance was public land. Romana Gauzon, on the other hand, did not oppose the registration applied for, but insisted that the same be made subject to her alleged right to redeem the lands from the foreclosure sale, and the whole thereof, alleging that not only 465 hectares thereof, but the entire 611 hectares was included in the mortgage and had been sold on the foreclosure sale and that the deed from Mondragon. * * * It appears * * * clearly from the statements and admissions of Romana Gauzon and of her counsel upon the first trial that she understood and believed at all times that the 146 hectares, which she now claims, were included in the mortgage to the Company and that she never had or claimed to have any interest therein except the right of redemption; that under all the facts and circumstances of the case we cannot now accept her change of front and award her title which she formerly so strenuously rejected.

Judgment appealed, Rec., p. 213.

The findings on this point are concurrent.

* * * at the original trial she only claimed the right of repurchase.

Decision, Judge Romualdez, Rec., 205–6.

* * * counsel for the objection Romana Gauzon has not raised any objection as to the identity of the property; he has adduced evidence to prove that everything described in the application and the plan was owned by the objector before passing into the hands of the petitioner company.

Decision, Judge Benitez, Rec., p. 123.

If the appeal is dismissed and the writ of error alone considered the facts as found will be taken as established. If the appeal is considered the Court will not disturb concurrent findings. But —

POINT TWO.

EVEN WERE THE COURT TO ENTERTAIN THE APPEAL AND REVIEW THE EVIDENCE THE PROOF IS OVERWHELMING THAT ALL THE LAND WAS INCLUDED IN THE MORTGAGE AND IN THE FORECLOSURE SALE.

The description in the royal grant.

* * * a parcel of crown land in the barrio of San Carlos, pueblo of Calatrava, Province of Occidental Negros, the situation, extent, assessed valuation, and bounderies of which are as follows: Situated in the barrio of Subungcogong, * * * bounded as follows: On the north government forest land, the River Andong, and on the other side of the river lands of Don Roberto Masicampo. On the east, the said river Andong, and on the opposite side the lands of Don Roberto Masicampo, government mangrove swamps and the beach. On the south, said mangrove lands and the beach, more mangrove swamps, the River Gigalaman, and on the other side of the river land now being applied for by Don Leon Vega and land of Victor Visitacion; and on the west the said River Gigalaman, and on the other side lands belonging to Don Victor Visitacion and the government forest lands referred to above.

Exhibit 3, Rec., p. 3.

The description in the mortgage.

In the certificate of the Registrar of Deeds (Rec., p. 33) the description of the mortgaged property is substantially as in the royal grant, the difference relating only to the southern boundry, not in dispute.

The description in the Sheriff's deed.

Bounded on the north by the government forest lands and the River Andong and on the other side of this river by lands of Roberto Masicampo; on the east the same River Andong and on the opposite side

lands belonging to the same Roberto Masicampo, mangrove swamps belonging to the government, the beach, other public mangrove swamps, the River Gigalaman and on the other side of this river lands applied for by Don Lope Vega and those of Don Victor Visitacion and the said state forest lands.

Exhibit 6, Rec., p. 9.

The description in the Company's application.

The royal title issued to Romana Gauzon is made a part of the petition, the description given being that taken from the technical description prepared by the surveyor. The area, as shown by that survey, is given in the application as 602 hectares, 76 ares, and 65 centiares, while in the royal title attached to the application (Rec., p. 3) the lesser area of 465 hectares and a fraction is given. The Court has determined, as against the opposition of the Insular Government, that the larger area is the correct one, corresponding to the controlling metes and bounds.

The documents attached to the record and the testimony adduced show that the area, situation and bounds of the hacienda San Jose or Subongcogong are the same as those described in the application and plan.

Decision Land Court, Rec., p. 123.

The acquiesence of appellant Gauzon in the description.

In her written answer to the petition for the registration of the property the appellant said:

* * * she opposes the application * * * for the registration * * * of the hacienda San Jose or Subongcogong * * * the detailed description whereof appears in application, plan, and technical description filed by petitioner and attached to the record of the above entitled case * * * as a result of the judgment rendered in the foreclosure proceedings *the said hacineda* was sold at public auc-

> tion * * * and adjudicated to the Compañía General de Tabacos de Filipinas * * * the objector respectfully prays the * * * court to deny the title applied for by the Compañía General de Tabacos de Filipinas to the hacienda San Jose or Subongcogong unless such title be granted with the express reservation that the objector * * * has the right *to repurchase* the same. * * *
>
> Answer, Romana Gauzon, Rec., pp. 17–20.

The attention of the Court is invited to the fact that this pleading is verified by the oath of the appellant.

The position taken by appellant at the first trial.

At the trial before Judge Benitez, Mr. Arroyo, the attorney for the Company, called on the attorney for Doña Romana Gauzon to define his position with regard to the difference in the area of the hacienda as shown by the old grant and by the new survey, the colloquy being as follows:

> Arroyo. * * * what is the claim of Doña Romana Gauzon with regard to these 137 hectares? * * * now, we desire to know if Doña Romana Gauzon claims this difference or excess over the 465 hectares, jointly with the Attorney General, or what it is she claims with regard to this difference?
>
> Seva. (Attorney for Romana Gauzon) * * * All persons who have any experience in the matter of securing titles to real estate are aware of the defective form of crown titles with regard to the extent of the property concerned. Very frequently the properties contain a greater area than that indicated in the royal title, within the boundaries which the titles themselves give as the boundaries of the property. Now, then, Doña Romana Gauzon * * * claims to have the *right to repurchase* which is mentioned in the opposition. * * * these two tracts together form the 600-odd hectares which *make the estate*, and over the whole of this area Doña Romana claims the

> rights which she alleges in her written opposition (Rec., pp. 64–65). * * * In consequence we maintain, for the benefit of the objector, and in order that she may obtain her right to *repurchase* not only the 137 hectares, but the whole of the property (Rec., p. 65). * * * That, in substance, is the opposition. *We do not object to the petitioner obtaining title* but only with the reservation that the decision shall state that it is charged or encumbered with the *right of redemption* which the objector still possesses (Rec., p. 67).

The appellant, Romana Gauzon, testified at the trial before Judge Benitez, on January 6, 1911, as follows, in part:

> Sepulveda (Fiscal). Do you know the area of the land of which you allege yourself *to have been* the owner?
>
> A. The whole land on the hacienda towards the mountain? More than 600 hectares.

She then went on to state that she had been aware since 1904 that the area was in excess of that stated in the royal title; that the land was surveyed for the royal title by one Fuentes, who made a plan of it; that the Tabacalera (the petitioner for registration) has the plan now; that appellant gave it to the Tabacalera when she "mortgaged the property" (Rec., p. 104).

At the close of the first trial the appellant was apparently apprehensive lest the Company should contend that it acquired title to the excess area from Mondragon, whose quit claim title had been taken to avoid trouble (*ante*, p. 9), and on January 20, 1911, she filed an amended answer (Rec., p. 107) in which she expressly contends (Par. 1) that the Company acquired title through her, and not through Mondragon, of the whole

> area of more than 600 hectares contained in the hacienda San Jose * * *

and that

> * * * therefore the said objector continues to have the right *to repurchase* * * * over the whole of the 602 hectares of the property * * *,

and prays that the Court declare—

> that the objector has the right to *repurchase* the whole of the 602 hectares which compose the hacienda San Jose.
>
> Rec., p. 107.

In the trial brief of the attorney who appeared for the appellant Romana Gauzon at the first trial in the Court of Land Registration he formulates the position of appellant as follows:

> We respectfully request that *without prejudice to granting the petitioner title to the 602 hectares* which *compose the estate* in question, on issue of said title the objector be reserved the right to *redeem* not only the 465 hectares * * * but also the remaining 137 hectares. * * *

Upon the appeal to the Supreme Court from the decision of Judge Benitez, that the Company was the owner of the entire 602-odd hectares, and that Doña Romana Gauzon had no right of redemption over any part of it, her attorney reaffirmed his position, the prayer of his brief being:

> Wherefore the objector and appellant prays the Honorable Supreme Court * * * to deny title to the Compañía General de Tabacos de Filipinas, or if it grant to the petitioner title to the 602 hectares * * * which are contained in the hacienda applied for that it reserve to the said objector * * * the right to repurchase, not only the 465 hectares

* * * but also the other 137 hectares which comprise the tract * * *

Rec., p. 170.

The land described in the mortgage and in the title deed of the Tabacalera is the same land to which the lower court decreed title in favor of the Company. The boundary to the north, where the appellant Gauzon now claims to have reserved certain lands to herself, and to have excluded the same from the mortgage, is described as being "government forest land and the River Andong." The mortgaged lands, now the admitted property of the Company, are not bounded on the north or in any other direction by any lands of Romana Gauzon. It is obvious that if a mortgage is intended to cover only part of a larger tract such words of description are invariably used to indicate the exclusion as will permit one to determine at a glance that only a portion of the tract belonging to the mortgagor is included. This is because when a portion of a larger tract is mortgaged it is of necessity bounded in at least one direction by the remainder of the tract, which is to be excluded, and in the description of the mortgaged property the mortgagor *must always be one of the adjoining owners.* In this case the tract described in the mortgage and in the deed of foreclosure is shown to be entirely surrounded by natural boundaries and by lands of third persons.

The Supreme Court of the Philippines was entirely wrong in the assumption upon which it ordered the case remanded for a new trial—viz: that the appellant had not observed that there was a difference between the area of the hacienda as stated in the royal grant and as disclosed by the survey. In the brief submitted on her behalf on the first appeal to the Philippine Supreme Court (Rec., p. 162) appellant's attorney prints a letter written by Mondragon to appellant's agent Sierra, in September,

1906—the first trial was in 1911—in which Mondragon expressly suggests that this difference in area be seized upon as a ground for contending that the excess was not included in the mortgage. The suggestion was not acted upon, however, as appellant's attorney says in his brief (Rec., p. 164):

> But neither Sierra nor the objector (Gauzon) whom he represented desired to conspire with Mondragon in order to defraud the petitioner company and diminish the guarantee which the objector had given it.

What appellant regarded as fraudulent then is equally fraudulent now.

It was not until the Philippine Supreme Court ordered a new trial as a result of what in its final judgment it recognizes as a misunderstanding of the position of petitioner with regard to the Mondragon deed (Rec., p. 213), that it ever occurred to the appellant to contend that the mortgage to the Company did not include the entire 602 hectares. She had, indeed, stated at the first trial that part of the land of which the estate was composed was acquired by cultivation and occupation, independently of the royal grant (Rec., p. 104), but the entire tract is included under the designation of San Jose, and it was this property which she repeatedly and insistently declares was mortgaged to the Company.

POINT THREE.

AFTER FORECLOSURE OF A MORTGAGE UNDER THE PROCEDURE PRESCRIBED BY ACT 190 OF THE PHILIPPINE COMMISSION NO FURTHER RIGHT OF REDEMPTION EXISTS.

It is unquestionable that the only issue really presented to the court below was whether appellant still retained a right of redemption of the hacienda San Jose after the foreclosure of the mortgage upon it. The text of the Code is plain and the authorities cited by the Philippine Court are, we respectfully submit, conclusive to such a degree that extended argument on the point must be wholly unnecessary.

Briefly stated, the contention of appellant with regard to the alleged right of redemption, as set forth in her answer at the second trial (Rec., pp. 141–144, inc.), is:

1. The sheriff, in his certificate of sale to the Company as purchaser of the Hacienda de San Jose at the foreclosure sale, dated September 12, 1906 (Rec., p. 9), stated that the property might be redeemed within a year; therefore the right of redemption was reserved.

2. Four months and two days before the expiration of the year the Company caused an attachment to be levied, in aid of another action, upon the "right of redemption" reserved to appellant by the sheriff; the effect being, appellant contends, to suspend the running of the term of the right to redeem until the attachment was dissolved in November, 1911.

Our contention was, and is, (*a*) that the insertion of the clause regarding redemption, not being authorized by law, was mere surplusage; (*b*) that the right of redemption never having existed was not created by the mistake of the officer in preparing the deed or by the attachment; (*c*) that had the right of redemption actually existed the at-

tachment would not have prevented its exercise or extended its existence beyond the statutory period; (*d*) that even accepting appellant's theory as regards the existence of the right to redeem it has long since expired.

The procedure for foreclosure of mortgages in the Philippine Islands is prescribed by sections 254 to 272 inclusive of the Code of Civil Procedure (Act 190). Section 257 reads, as regards the effect of the foreclosure sale, as follows:

> The sale, when confirmed by decree of the Court, shall operate to divest the rights of all the parties to the action, and to vest their rights in the purchaser.

The contention of appellant in this regard was disposed of by the Supreme Court of the Philippines on the first appeal, as follows:

> The second question is one of law. What is the effect of a decree of foreclosure or judicial sentence barring the equity of redemption or equitable right of the mortgagor under the Code of Civil Procedure of these Islands?
>
> It is a principle well established that the right of redemption is a statutory right and does not exist in the absence of statute. In the case of Parker *v.* Davies, 130 U. S., the Court says, at page 47:
>
> Counsel for the plaintiff speaks of a common-law right of redemption after sale that attaches in the absence of any statutory provision on the subject. We are not aware of any such right existing at common law, or in the system of equity as administered in the courts of England previous to the organization of our government. It is a mistake to suppose that the case of Clark *v.* Reyburn, 8 Wall. 318, recognizes a right of redemption after a sale under a foreclosure decree independently of statute. It is there stated that by the common law, when the condition of the mortgage was broken, the estate of the mortgagee became indefeasible, and that equity

interposed and permitted the mortgagor, within a reasonable time, to redeem upon the payment of the amount due before sale; also, that, according to the settled practice in equity, when proceedings to foreclose were not regulated by statute, this right to redeem before sale is fixed by the primary decree, and that only in the event of final default in paying the amount ascertained to be due is an absolute sale ordered. * * * It is clear that the right to redeem after sale, wherever it exists, is statutory.

It is equally certain that the right of redemption in the form in which it is asserted in this case, *i. e.*, after sale under decree of court, did not exist under the Spanish Law. Mr. Coote says: "By the civil law, the debtor might redeem the estate on payment of his debt, at any time before sentence passed." Coote on Mort., 10. "Until debarred by judicial sentence." Ibid., 209. "Until decree of foreclosure." Ibid. "The mortgagor is the equitable owner until the land is redeemed or foreclosed." Ibid., 319. Under the Spanish Law the right of redemption was destroyed by the sale under the decree of foreclosure.

"Both at law and in equity," says Mr. Jickling, "the conveyance is at first conditional, not absolute; and in both, the estate may, on an event, be discharged of the condition, and become the indefeasible property of the mortgagee. At law, that event is the non-payment at the day agreed upon; in equity, it is the decree of a court of judicature. In the former jurisdiction, it is conventional; in the latter, judicial." Jickling's Analogy, 66. Chancellor Kent, in his definition of a mortgage, states that "the legal ownership (of the land mortgaged) is vested in the creditor; but in equity, the mortgagor remains the owner until he is debarred by his own default, or by judicial decree." 4 Kent., 133. And again: "The equity doctrine is, that the mortgage is a mere security for the debt, and only a chattel interest, and that until decree of foreclosure, the mortgagor continues the real owner of the fee." Ibid., pp. 159-160.

Hilliard says: "Foreclosure is the process by which a mortgagee acquires an absolute title to the property

of which he had previously been only the conditional owner, or upon which he had previously a mere lien or incumbrance." 2 Hilliard on Mort., 1, 1st Ed.

Whenever the decree is pronounced, the event which fixes the limit to the mortgagor's equitable estate has happened: and to say the mortgagor may redeem after "sentence passed," or after he is "debarred by judicial decree," or "decree of foreclosure," is in contradiction of, and directly repugnant to, language so explicit and entirely unambiguous, as to preclude the possibility of successful cavil.

The doctrine of the adjudged cases may be stated, without hazarding successful controversy, to be that after decree of foreclosure or judicial sentence, and immediately thereupon, the entire estate, both legal and equitable, becomes vested in the mortgagee, subject only to a judicial sale, from the proceeds of which the mortgagor may, perchance, derive the benefit of a resulting surplus.

This is the general doctrine prevailing in the absence of statute. It may be modified, and is modified either materially or casually, by the legislative authority of the State. Here the mortgagor is entitled to the time intervening until the term of court next succeeding the one in which the decree of foreclosure is made to pay the mortgage debt, interests, costs and charges; and in the event of such payment the land remains his own. The provisions of the Code of Civil Procedure which deal with the foreclosure of mortgages do not mention the equity of redemption nor do they prescribe anything in relation thereto. Having arrived at the point where the sale is decreed and is to be made, reference is then made to the provisions of the same Code in relation to sales under execution, and the provisions in relation to such sales are made applicable to sale of land in foreclosure. While the provisions of the Code relating to the sale of property under execution, to which the provisions of the Code relative to the foreclosure of mortgages make reference, provide that, where a sale of property is made by virtue of an exe-

cution, the debtor whose property was sold shall have one year within which to pay the face of the execution, interest, costs, and charges and to retake the property thus sold, nevertheless, we are of the opinion that it was not the intention of the Legislature to include those provisions in the reference contained in the provisions relating to mortgage foreclosures. The substantive rights of the parties to a mortgage are determined by the general law, and in the present instance, under the Code of Civil Procedure as well as under the general law, it is undoubted that the right of equity of redemption is property and is subject of the same protection which other property receives at the hands of the law. The owner of that equity is entitled to the same consideration which the owner of other property receives and he can be deprived of it only under the same circumstances and conditions and with the same formalities. It is equally true, on the other hand, that the equity of redemption, if there be one, being property of the mortgagor and in derogation of the rights of the mortgagee, such equity will not be held to be conferred upon the mortgagor in the absence of clear statutory provisions to that effect. The contract between the parties, construed by the general law, is that to which we must first look to determine their rights, and that contract as interpreted and construed by the general law of the state is, in the absence of special statute, the only source from which the rights of the parties under the contract spring. It being the general rule that the rights which pertain to the mortgagor are completely terminated and cut off by the degree of foreclosure and the sale thereunder, it follows of necessity that his rights cannot be continued beyond that point except by clear provision of statute, inasmuch as, in the absence of such provisions, the rights of the mortgagee would become absolute on the happening of that event. We are of the opinion, therefore, that when in the law relating to the foreclosure of mortgages, reference was made to the provisions of the Code relative to the sale of property under execution

it was intended, there being no express words to the contrary, to include in such reference only such provisions as refer to the mere management and conduct of the sale—the mere ministerial acts which must be performed in order that the sale be legal—and not to those provisions which relate fo the substantive rights of the parties before or after the sale has been consummated.

Nor do we believe that the insertion in the document of sale by the sheriff of the clause relating to the right of redemption resulted in binding the petitioner to that effect. There being no right, in these Islands, to redeem after sale, the act of the sheriff inserting the clause referred to was wholly beyond his powers and therefore, standing alone, ineffective. It was ineffective as to the petitioner under all the circumstances. To hold that the act of the sheriff and the acceptance of the document by the petitioner took a right from the petitioner and conferred it upon the respondent would be taking property from the petitioner without any consideration whatever. The petitioner received nothing for releasing his rights. and the respondent paid nothing therefor. Besides what may be termed acts of the law, a person can be deprived of property only by his own voluntary act, *i. e.*, by release, conveyance, etc., or by some other act or failure to act giving rise to estoppel. It is not claimed that the petitioner gave the right of redemption to the respondent. It is not claimed that he conveyed or released it. The petitioner received nothing for the transfer of that right and the respondent neither gave nor withheld anything therefor; nor did nor does she suffer in any way from any act of the petitioner in relation thereto. She was in no way prejudiced or misled by the insertion of the clause in question, and she sustained no injury and suffered no detriment by reason of the acts of the petitioner in connection therewith. All her rights in the hacienda were gone when the insertion occurred.

Rec., pp. 133–135, inc.

This decision was announced in February, 1912 (Rec., p. 136), and since that time has been followed by the Philippine Supreme Court.

Benedicto *v.* Yulo, 26 Phil. Reps. 166.

It has long since become a rule of property in the Philippine Islands.

On the second appeal the Court said (Rec., p. 216):

> With respect to the right of the objector to redeem the property sold on foreclosure the Court repeats its finding in the decision entered in the first action, and affirms the doctrine announced in the case of Benedicto *v.* Yulo (26 Phil. Rep. 160).

It may be inferred from the language in which some of the assignments of error are couched that it is the purpose of appellant to contend that the lower court has held that she has lost her right of redemption by estoppel. No such opinion can be rightly attributed to the Court, and we do not contend that the decision is to be affirmed upon that theory. We have cited and the court below has cited the statements and conduct of appellant at the first trial to show what her understanding was regarding the property covered by the mortgage. Art. 1282 of the Philippine Civil Code declares that the intention of the parties to a contract is to be determined principally by their conduct contemporaneous with and subsequent to the making of the agreement. Her statements and her conduct are evidence, in the nature of admissions, as to what was covered by the mortgage of the "Hacienda de San Jose."

POINT FOUR.

HAD THE RIGHT TO REDEEM AFTER FORECLOSURE EVER EXISTED IT HAS LONG SINCE EXPIRED. THE RECORD FAILS TO DISCLOSE ANY TENDER OF THE AMOUNT OF THE JUDGMENT WITHIN THE ALLEGED TERM OF THE PERIOD OF REDEMPTION.

If the land had been sold under ordinary execution the right to redeem it would have expired in a year. (Code of Civil Procedure, Sec. 465.) Appellant made no tender within that time. Such tender is absolutely essential (Burley v. Flint, 105 U. S. 247). Her statement that she wanted to redeem (Rec., p. 19, par. j.) is not equivalent to tender. Obviously, had she really desired to redeem and been able to command the funds, the mistaken and futile "attachment" of the asserted "right of redemption" was not an obstacle to the making of a tender. The amount for which the judgment was rendered was definite and certain, and the right to an accounting from the receiver, had there been any such equity of redemption in existence, would not excuse the failure to make an effort in good faith to exercise it within the statutory period.

(a) **The alleged right of redemption has expired by the very terms of the judgment of August 29, 1907.**

If it were to be conceded, for the sake of the argument, that property sold on foreclosure is subject to redemption in like manner as property sold on ordinary execution, as contended by appellant, the period of twelve months allowed by the Philippine statute for such redemption has long since expired. If to this it be replied that the period was extended by the order of the Court of First Instance of August 29, 1917 (Rec., p. 46), directing that the running of the period be suspended as from May 10th, 1907, "until this judgment becomes final," and assuming without

admitting that such order was within the power of the Court, the answer is that on the face of the record the judgment became final not later than May 13, 1909, by its affirmance, on April 13, 1909, by the Philippine Supreme Court (Rec., p. 50). According to appellant's theory (Rec., p. 167) at the time the attachment of the "right of redemption" was levied the term of the alleged redemption had still four months and two days to run. By the terms of the order which is supposed to have produced the stay its effects would cease four months and two days from the date upon which the judgment containing the order of suspension became final. The evidence fails to disclose any proof that appellant made any effort whatever to redeem before the expiration of this period.

(b) **The judgment in the second case was satisfied in 1909.**

It will hardly be contended that the attachment of the alleged right of redemption was an obstacle to its exercise after the judgment in the case in which it was rendered had been satisfied. In the first decison the Philippine Supreme Court found as a fact that—

> * * * in September, 1909, the Court of First Instance, upon said proceedings, * * * namely, the one to recover the balance due on the mortgage debt [*held that the judgment*] had been wholly satisfied by the payments which the receiver had made to the Company out of the proceeds obtained from the said crop of sugar cane. * * * Neither the Compañía General de Tabacos de Filipinas nor Romana Gauzon appealed therefrom.*
>
> Rec., p. 130.

*NOTE.—The words in brackets in the above quotation do not appear in the transcript, but the context and the reference on page 181 of the record (appellant's Exhibit ZD) clearly show their omission to have been a clerical error.

The attachment being granted merely in aid of the expected judgment, and being a mere ancillary process, it is self-evident that the satisfaction of the judgment operated to discharge the attachment just as effectually as would a judgment for the defendant.

(c) **The record fails to disclose evidence of a tender within four months and two days from the date of the formal declaration that the attachment had "ceased to be effective."**

While an order declaring that an attachment which had long before been dissolved by the satisfaction of the judgment in the case in which it was issued had "ceased to be effective" would seem to be a mere formality, productive of no effect whatever, it seems that such an order was in fact made in the record of the second suit, on November 27, 1911—over two years after the judgment had been extinguished by payment. It is stated in appellant's amended opposition (Rec., p. 143, par. i)—

> that by an order of the Court of First Instance of Occidental Negros, dated November 27, 1911, the said preliminary attachment of the right of redemption was declared to have ceased to be effective.

Assuming, without admitting, that in the hypothesis of the existence of the right of redemption and of its suspension by the attachment, the remainder of the term for its exercise would have commenced from the date of this order, and not from the date on which the judgment became final, or from the date of its discharge by satisfaction—which would, of course, be the date on which the attachment "ceased to be effective"—the record wholly fails to disclose that appellant made any effort to redeem, by tender or otherwise, within the term of four months and two days from the time the attachment "ceased to be effective," or even from the time of the declaration that it

had become *functus officio*. Section 469 of the Philippine Code of Civil Procedure provides, with reference to the redemption of real property sold at ordinary execution sales, that the redemptioner may require the purchaser to render an account of the revenue received from the property, and that in the event of the refusal or failure of the purchaser to give such account upon demand, suit for an accounting may be brought, and the term of redemption is thereupon extended until fifteen days after the final determination of such action. The appellant, who has contended throughout that her alleged right of redemption is governed by the statutes relating to sales of real estate under ordinary execution, has failed wholly to prove that any such demand as is required by section 469 of the Code of Civil Procedure was made by her, or that if made it was not complied with. It is true that she has introduced in evidence at the second trial in the Court of Land Registration a certified copy of her unverified complaint in the action brought against the Company for an accounting (Exhibit Z 2, p. 146), in which it is *averred* that such demand was made and refused. Appellant has also introduced in evidence a certified copy (Exhibit Z 3, Rec., p. 147) of the answer filed on behalf of the Company in that case, in which the unverified averment regarding the alleged demand is expressly denied. No evidence whatever was introduced at the new trial to show that any tender or demand whatever was made by the appellant or on her behalf within four months and two days from the date of the dissolution of the attachment, or at any other time. A certified copy of an unverified complaint is certainly not proof of the facts averred therein by the pleader —and much less when they are shown to have been expressly traversed by the answer. It is true that it was admitted on behalf of the Company at that hearing that such an action had in fact been brought (Rec., p. 194), but

it was *not* admitted that the averments of the complaint in that action or any of them were true. Even had appellant been correct in her contention that the alleged right of redemption could have been exercised within four months and two days after the dissolution of the attachment the burden of proof would have rested upon her to show that a tender was made or the statute otherwise complied with within the time prescribed, and this she has wholly failed to do.

CONCLUSION.

It is respectfully submitted that the record clearly discloses that this appeal, perfected within a week of the expiration of the term of two years allowed by the statute, was taken merely for delay and to harass the Company; that the questions presented are so frivolous as to require no further argument, and that the judgment below should be affirmed, with costs.

Respectfully submitted,

F. C. FISHER,

Counsel for appellee and defendant in error.

WASHINGTON, D. C., *August 1, 1917.*

Office Supreme Court, U. S.
FILED
OCT 13 1917
JAMES D. MAHER,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 437

ROMANA SAVEON, Appellant and Petitioner in Error,

vs.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Appellee and Defendant in Error.

APPEAL AND MOTION TO DISMISS OR AFFIRM.

ALEX. BRIGHTON,
EVARTS BROWNE,
E. C. CLARKSON,
Counsel for Appellee and Defendant in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 437.

ROMANA GAUZON, APPELLANT AND PLAINTIFF IN ERROR,

vs.

COMPANIA GENERAL DE TABACOS DE FILIPINAS,
APPELLEE AND DEFENDANT IN ERROR.

REPLY TO MOTION TO DISMISS OR AFFIRM.

Responsive to notice that the appellee and defendant in error in the above-entitled cause will, at motion hour, on October 15, 1917, move:

1. To dismiss the appeal herein, with costs, for want of jurisdiction; and

2. To dismiss the writ of error herein, for want of jurisdiction; or

3. To affirm the judgment of the court below upon the ground that it is manifest that the appeal was taken and the

writ of error sued out for delay only, and that the questions presented are too frivolous to require further argument:

Comes now the plaintiff in error and represents to this honorable court that the above suggested motion is the final effort of the defendant company, whereby it seeks to avoid review of the series of proceedings instituted to deprive plaintiff in error of property of a great value because of a small loan or advance used in its improvement, over which property the defendant in error has exercised possession and control since 1905, practically coincident with the loan, and from which property it has received great returns, many times the amount of the original loan, for which no accounting has been made.

Proceedings on Mortgage.

The original litigation between the parties to this action grew out of a mortgage executed by the plaintiff in error in favor of the defendant company, to secure certain advances made to her by one Lazaro Motts and the defendant company, and a reference to these proceedings in the lower courts growing out of said mortgage is necessary to a proper understanding of the case.

Defendant company having acquired Motts' credits, the plaintiff in error on December 10, 1904, executed in favor of the defendant company a mortgage for an aggregate of the obligations then due, reckoned as amounting to ₱53,042.53. At that time the plaintiff was possessed, through her husband, of full title under a prior grant for certain properties at San Carlos Occidental Negros, Philippine Islands, known as Hacienda San José. This property, according to the grant, embraced land equivalent to 465 hectares, 33 ares, and 82 centiares, or 1,167½ acres. (See the Real Title covering the property granted, Rec., p. 3.)

Adjoining this property was a certain parcel of land, the

title to which was claimed by possession in the plaintiff, covering 146 hectares, being known as "Las Pastos."

It should be noted that the mortgage given was secured only by the property known as San José, the description of the land in the mortgage, and all subsequent proceedings had thereon, following the exact terms of the description in the grant of San José.

The mortgage stipulated that the obligation should become due June 30, 1905, a period of about six months from the date of the mortgage, but that it might be renewed another year at the will of the mortgagee, and to further secure the company for advances made to plaintiff in error, necessary to continue the operation of the property after the mortgage given, said company installed upon the premises its representative, whose salary was charged to the plaintiff in error's accounts, and whose duty it was to practically supervise the management of the plantation, it being understood that all the proceeds from the sale of sugar raised on the hacienda would be applied to the existing indebtedness.

In September, 1905, or shortly after the obligation became due under the stipulation, the defendant company, while still operating the property through its representatives, and after having charged to the plaintiff in error large sums on account of the planting of a new crop of sugar cane, filed a complaint against the plaintiff in error for the sum of the balance due on July 15, 1905, amounting to ₱51,784.29, and for ₱6,000 attorney's fees and costs, and at the same time, secured the appointment of one of its employees at San Carlos as receiver of the mortgaged property.

Due to the representations made to the plaintiff in error by the defendant company, that the action instituted was merely to secure the company in preference of her other creditors, and that the company would assist her financially as before until she could pay off the judgment which might be obtained, the plaintiff in error made no defense to the action, and judgment was obtained by default against her

April 18, 1906, for the sum of ₱58,687.03 in addition to ₱1,500, attorney's fees and costs. (See Rec., pp. 38, 63, 238.)

On July 20, 1906, the Court of First Instance of Occidental Negros ordered the sale of the mortgaged property, and thereupon the clerk issued an ordinary execution thereon, and some time in August, 1906, while the sheriff was advertising the mortgaged real property for sale, he seized and sold other property of the debtor covered by the mortgage, as well as certain caraboas, which were possibly covered by the mortgage, but which were sold like the other personal property, as upon ordinary execution and not by virtue of the mortgage. The sheriff, on the 6th of August, 1906, proceeded to levy upon the property of the debtor that had been mortgaged to the defendant, namely, the Hacienda San José, a tract of 465 hectares, 33 ares, and 82 centiares.

September 12, 1906, the property advertised and sold under the above-referred-to execution was bought in by the defendant company for the sum of ₱64,326.92. "The sheriff informed Couto (the representative of the defendant company who made purchase in its behalf), that the defendant (being the plaintiff in error), her heirs or assigns, were entitled to redeem the property sold within the term of twelve months from date. This fact was stated in the record which was subscribed by Couto, together with the sheriff and four witnesses." (See decision of the Supreme Court of the Philippine Islands dated April 12, 1909, in action between the same parties, reported 13 Philippine Reports, 472, 473.)

After said judgment so obtained upon the mortgage, the defendant company advanced to the plaintiff in error further sums for her personal expenses, and to the receiver to continue operation of the property, for all of which advances receipts were taken from the plaintiff in error, notwithstanding the judgment by default as above referred to, and in this way, up to September 12, 1906, the plaintiff in error

was found to be indebted to the defendant company in the sum of ₱75,420.54. (See decision of the Supreme Court of the Philippine Islands of April 12, 1909, in an action between these same parties, reported 13 Philippine Reports, 472, also decision of April 13, 1909, in another action between the same parties, recorded in 13 Philippine Reports, page 481.)

Among the properties of the plaintiff in error levied upon and sold under the judgment obtained in the mortgage proceedings, she was credited with ₱3,055.00, being the value of the caraboas and other personal property which, when added to the ₱64,326.92, paid by the defendant company under its purchase of the real property mortgaged, left a balance still due in favor of the defendant company of ₱8,038.62.

Instead of taking a deficiency judgment on motion in the foreclosure action for the above-stated amount, the defendant company instituted a *new* action against the plaintiff in error for ₱11,093.62, and levied an attachment upon the crop of sugarcane growing on the hacienda but not included in the sheriff's sale (see decision of the Supreme Court of the Philippine Islands of April 12, 1909, *supra*), and also upon the plaintiff in error's right of redemption specifically reserved on the sale of the real property as above stated.

In the court's decision in this second action the trial court credited the debtor with the proceeds of the sheriff's sale of the personal property ₱3,055 carried out under the execution of the judgment in the foreclosure case, and for which no credit had been allowed upon the mortgage indebtedness. The trial court also ordered that the proceeds of the attached sugar-cane should be first applied to the satisfaction of the judgment in the second action, and that if any balance remained unpaid it should be satisfied by the sale of the attached right of redemption, and, in order to defeat the obvious effort of the judgment creditor to deprive the mort-

gagor of her right of redemption, the trial court included in its judgment the following order:

> "And the receiver is hereby ordered immediately to render an account of the sugar produced in said hacienda. The execution of this judgment, if it becomes final, shall not be ordered until that account be filed and approved by the court. Furthermore, by virtue of the attachment of the right of repurchase of the defendant on the hacienda San José, the period of the repurchase is suspended until this judgment becomes final, such suspension to be understood as being effective from May 10th last" (Rec., pp. 48, 49).

This second action, evidently instituted for the purpose of complicating the affairs of the plaintiff in error, and increasing defendant company's hold upon her property, was later found to have been ill-advised, and to remedy the mistake the company sought to have the trial court disregard its own act in attaching the right of redemption, and to hold that no such right existed under the provisions of the Code of Civil Procedure for the foreclosure of mortgages, and also to disregard its attachment of the sugar-cane on the ground that it had already become the property of the mortgagee by virtue of the purchase of the hacienda upon which it was growing. The trial court having denied the company's petition in this respect, the matter was appealed to the Supreme Court of the Philippines.

The Supreme Court affirmed the judgment of the trial court, holding in effect that the right in general of the mortgagor to redeem after sale under foreclosure proceedings was not before the court, and could not be raised by the mortgagee, because it was estopped by the attachment of that right of redemption, and that such right of redemption as a matter of law was inhibited and could not be exercised during the period of the attachment and while the litigation was pending. (See decision of April 13, 1909, 13 Philippine Reports, 481, 486.)

In a further effort to remedy its errors in the sheriff's sale, the mortgagee company moved in the foreclosure case to have the sugar-cane declared to be included in the sale of the hacienda, and if not, to have the sale set aside and a new sale ordered. This motion was denied, and the sale as made confirmed, and the mortgagee having appealed, the Supreme Court declared that the sheriff's sale of the hacienda and other property as set forth in the memorandum of sale and signed by the sheriff and the mortgagee as purchaser, specifying the property sold and the price paid therefor, and granting the mortgagor a year within which to redeem, constituted a contract of purchase and sale conclusive upon the purchaser. (Decision of April 12, 1909, 13 Philippine Reports, 472, 479.)

This decision, when considered in connection with the decision of the following day handed down by the same court, serves to emphasize the intention of the Supreme Court to hold the mortgagee estopped from denying the right to redeem, which had not only been expressly granted by virtue of the signed memorandum under the terms of the judicial sale, but thereafter attached by the mortgagee.

As before stated, at the time of the institution of the foreclosure proceedings the defendant company obtained the appointment of one of its employees as receiver of the mortgaged property. The sugar-cane attached in the second action and already in its possession was formally delivered to the receiver after the attachment by the sheriff. The receiver disposed of it, and only after repeated orders of the court and much difficulty was he compelled to account for the proceeds. When he did so, in collusion with his employer, the defendant company, he attempted by excessive and fictitious charges for expenses and salary of himself to consume the entire proceeds. The trial court found that the receiver ought to have on hand an amount, which, on comparison with the judgment of the Supreme Court of April 13, 1909, *supra,* was sufficient to satisfy the judgment in the second

action against the mortgagor, and ordered him to pay the same into court. From this order and from the order rejecting his excessive and fictitious charges, the receiver, represented by the mortgagee's company's attorney, appealed. The Supreme Court affirmed the judgment of the trial court (decision September 26, 1911, 20 Philippine Reports, 261), referring to its two previous decisions of April 12 and April 13, 1909, for a history of the foreclosure proceedings, and finding that the receiver was an employee of the mortgagee and that he apparently acted as though his only responsibility was to his employer.

As soon as this judgment of September 26, 1911, of the Supreme Court was complied with by the receiver, counsel for the plaintiff in error called upon the defendant company to render a detailed account in writing, supported by vouchers, of all rents and profits which the mortgaged property had produced from the time that said company took possession thereof, and for a relation of all the expenses and taxes paid by said defendant company during the same period, in order that the plaintiff in error might know what sum she would have to pay so that she might make use of her right to repurchase the mortgaged property, and that after waiting for a month from the date of the demand without receiving any response, the plaintiff in error filed suit against the defendant company in the Court of First Instance of Occidental Negros on the 15th day of January, 1912, praying that the said court order the petitioner to audit the said account, and this suit is still pending (Rec., pp. 146, 147).

In the meantime the former sheriff, who had three or four years before sold the hacienda in the foreclosure proceedings subject to the right of redemption, was prevailed upon to execute a deed without limitation, and after he had long since ceased to be sheriff (Rec., p. 144).

Proceedings on Application for Registration of Title.

This case is brought to this court by both writ of error to and appeal from the Supreme Court of the Philippine Islands, from its decision on the application of the defendant company for a registration of title in and to a body of land, covered by a survey which accompanied the application for registration, embracing 602 hectares, 76 ares and 65 centiares, which includes not only the mortgaged premises of 465 hectares known as Hacienda San José proper, but 147 hectares adjoining, also the property of the plaintiff in error through possession.

The defendant company, having thought itself secure in its title to the Hacienda San José, through the proceedings hereinbefore detailed, being fully aware that the mortgage proceedings included only the Hacienda San José proper, and being desirous of depriving the plaintiff in error of her additional tract known as Hacienda Las Pastos, adjoining the mortgaged property, the most valuable part for sugar production, entered into negotiations with one Mondragon, a former tenant of the plaintiff in error, who evidently was prevailed upon to assert title to the Hacienda Las Pastos, and to execute a deed of that property in favor of the defendant company, and thereupon the defendant company caused both properties to be surveyed as one for a Torrens title.

It was after these preliminaries and in the month of March, 1910, more than a year and a half before the attachment of the right of redemption was released, and before the receiver was discharged, that the company filed a petition in the Land Court under Act 496 of the Philippine Commission for the registration of the two parcels of sugar land, specifically claiming in its petition the 465 hectares, being the original grant, under the foreclosure sale, and the adjoin-

ing tract of 146 hectares (Las Pastos), by virtue of the deed from Mondragon.

In the opposition filed to the application for registration of title the plaintiff in error was represented by counsel, and therefrom it may be fairly deduced that he contended that Las Pastos, being the adjoining tract of 146 hectares, was included in the mortgage of the Hacienda San José, and that his client was entitled to redeem it, evidently fearing the effect of the combination between the company and Mondragon respecting the title set up in the additional tract. On the other hand, counsel for the defendant company, notwithstanding the representations in the opposition, insisted that the additional tract had been acquired by the company from Mondragon, offered his deed in evidence, and presented questionable testimony to prove that Mondragon and his predecessors in interest had acquired the property by adverse possession from time immemorial (Rec., pp. 131-132).

On behalf of the plaintiff in error, however, it was proved by indisputable oral and documentary evidence that Mondragon and all his predecessors in interest were her tenants at the time of their occupation of the land, notwithstanding which the court found that the petitioner was the owner of both parcels and decreed registration thereof.

On appeal the Supreme Court, in its judgment of February 10, 1912, held that under section 257 of the code of civil procedure the respondent was not entitled to redeem within one year as provided in executions on ordinary judgments, and that there was no consideration for the reservation of that right in the Sheriff's certificate. With reference to the parcel of 146 hectares, being the Hacienda Las Pastos, the Supreme Court found:

> "We are satisfied, upon the whole case, that the clear weight of the evidence, in fact the overwhelming preponderance of the evidence, is in favor of the contention of the respondent that she has demonstrated a better right to the land in question than has the petitioner in this case."

The Supreme Court therefore affirmed the judgment of the trial court as to the Hacienda San José of 465 hectares, and reversed it as to the adjoining parcel of [illegible] hectares known as Las Pastos, holding that the latter belonged to the respondent unaffected by the mortgage foreclosure (Rec., p. 129).

Upon motions for rehearing presented by both sides, the court set aside its judgment and remanded the case for a new trial, instructing the respondent, in effect, to amend her opposition so as to conform to the views expressed by the court with reference to the parcel of 146 hectares (Rec., p. 136).

Before the new trial, the respondent had amended her opposition in line with the court's suggestion, (Rec., p. 141), and upon the new trial offered some documentary evidence tending to show that the parcel of 146 hectares was not part of the Hacienda San José proper. Nothing was offered at the new trial on behalf of the petitioner in support of its claim to Las Pastos. It was argued by counsel for petitioner that the deed from Mondragon was offered in the nature of a quit-claim deed because the company feared some conspiracy between the respondent and Mondragon, but not a word of proof was offered in support thereof. The deed from Mondragon was not in the form of a quit-claim deed, but of a warranted deed which provided for withholding the principal part of the consideration until after the trial, making its payment dependent upon the grantor establishing title thereto in favor of the petitioner. Neither was there any attempt to excuse the presentation of the questionable testimony in support of Mondragon's alleged possession, and that of his predecessors in interest, all of whom proved to have been tenants of the respondent.

On the new trial the trial court again decreed registration of the Hacienda San José, but denied the petition as to the adjoining parcel of 146 hectares known as Las Pastos. Both

parties again appealed, and the Supreme Court, although it had entirely vacated its former decision, made no finding whatever upon the subject of the right of redemption, but devoted itself entirely to the controversy over the 146 hectares, in effect holding that the respondent by her defense on the former trial in which her lawyer contended that the 146 hectares were included in the mortgage, was estopped from making the very change in her defense on that subject which the Supreme Court itself had suggested she should make.

In this second decision, the Supreme Court finds expressly that the two parcels were the property of the respondent, the Hacienda San José of 465 hectares having been acquired by grant, and the other of 146 hectares from a source not clearly established by the proofs, and then, solely on account of the alleged inconsistencies between the attitude of respondent's counsel on the first and second hearings, finds that the petitioner acquired title to both parcels under the mortgage foreclosure, and accordingly ordered them both registered in its name (Rec., p. 210).

It will be noted that in neither of the decisions of the Supreme Court upon the petition for registration, that of February 10, 1912 (Rec., p. 129), or that of November 20, 1914 (Rec., p. 210), was any mention made of the prior decisions of the same court based on the proceedings growing out of the mortgage and sale of the property, and reported in volumes 13 and 20 P. R., under which the right of redemption specifically provided for in the memorandum of sale of the mortgaged property was seemingly upheld.

With this statement of the prior proceedings between the parties to this action, we will consider the grounds on which the motion to dismiss or affirm are based.

Jurisdictional Amount.

The motion raises the question as to whether the jurisdictional amount is involved in the pending appeal or writ

of error. By section 248 of the Judicial Code taken from the act of July 1, 1902 (32 Stats., 695), it is provided:

> "The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby, in which the constitution, or any statute, treaty, title, right, or privilege of the United States, is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court on appeal or writ of error by the party aggrieved, within the same time, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States."

See also section 27 of the act of April 29, 1916 (39 Stats., 545, 555).

It will be noted that the jurisdiction exists to review the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings where the value in controversy exceeds $25,000, *"or in which the title or possession of real estate exceeding in value the sum of $25,000, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question."*

Matters in Issue.

From the detailed statement of the proceedings hereinbefore recited it will be seen that there is necessarily involved in the present case:

1. The right of the plaintiff in error to the exercise of the right of redemption secured to her in the memorandum of sale of the mortgaged property, the Hacienda San José.

2. The question as to the extent of the real property mortgaged and sold under the foreclosure proceedings, and

3. The right to an accounting for the proceeds derived from the products of the lands during the possession of the premises by the defendant in error through its agents.

In the motion to dismiss, it is urged that the issues presented involve, "(*a*) the alleged right to redeem some 455 hectares, and (*b*) the title to some 137 hectares." It is further urged that the value upon which the jurisdiction of the court depends in cases of this kind "is the value at the time of the institution of the proceedings."

Under the decision of this court in Street *vs.* Ferry (119 U. S., 385) there would seem to be no doubt that the jurisdictional value is the value at the time of the final judgment or decree, which in this case was on December 12, 1914.

Under the specific terms of the act of July 1, 1902, *supra*, providing for appeals from the Supreme Court of the Philippines, hereinbefore quoted and referred to, or, for that matter, under any provision providing for appeals, it is the entire value of the land, and if necessary the rents and profits produced from it which are in dispute. Even if the case were one for redemption only, the property sought to be redeemed, and not the right of redemption, would be in controversy for the same reason that it is the value of the land which is in dispute in an action for specific performance of a contract to convey, rather than the difference between the amount agreed to be paid and the value of the land (Scripture *vs.* Johnson, 3 Conn., 211; Wheat *vs.* Gray, 4 Day Conn., 419; 3 Corpus Juris., pp. 426-27).

According to the defendant's own contention, ₱75,000

were loaned on the property in 1906, and it was sold at sheriff's sale for ₱64,000 (Rec., p. 48).

Again, it is practically undisputed that the land is now worth at least a half-million pesos, and that the defendant company has derived about a half-million net profit from it during the litigation, and is now deriving more than ₱100,000 net profit from it per year.

There is a suggestion in the brief on the motion to dismiss that this great value and the large profits are due to the contracting of the sugar-cane grown on the land to a large sugar central established at San Carlos, and to the European war, and that this influence had not taken effect upon the value of the property until the year 1915. The sugar central, however, was finished in the latter part of 1913, and the contract providing for milling of all cane grown on the land in question for thirty years was made as early as 1913, for the crop of that year was milled in this sugar central in the early part of the year 1914, and, according to the undisputed affidavits, was sold before the war began, and netted the company over ₱68,000.

It is well known that the war had raised the price of sugar long before December, 1914, and the 1914 and 1915 crops netted over ₱100,000 each, and the 1916 crop netted as much, if not more.

The right to the appeal and writ of error in this case was strenuously opposed by the defendant company before the Supreme Court of the Philippines upon the ground that the amount involved on the 12th of December, 1914, the date of the judgment of that court, was less than the jurisdictional amount of $25,000. The justice of the Supreme Court who allowed the appeal and writ of error on consideration of the affidavits filed, pro and con, found "that the amount involved between the parties on the 12th of December, 1914, the [illegible] of the judgment of this court, was clearly in excess of $25,000 United States currency."

In the case of Gage *vs.* Pumpelly *et al.*, decided by this court (108 U. S., 164), it was held:

> "In a suit involving title to real estate the court will not dismiss an appeal for want of jurisdiction solely because, where there are conflicting affidavits respecting the value of the property, it may possibly reach a conclusion that the estimates agreed on below were too high."

The defendant company, in resisting the appeal and writ of error below, presented no affidavits other than those of its own officials, whereas the plaintiff in error filed not only her own affidavit, but affidavits of a number of distinterested sugar growers and persons dealing in real estate, showing that the land in question was worth at least a half-million pesos on December 12, 1914, and a quarter of a million at the time the litigation was begun.

In support of the present motion, counsel seem to rely alone upon certain returns made as to the value of this property for the purpose of taxation, which we do not think this court will find sufficient to overcome the clear and positive proof as to the actual value of the property in question.

In conclusion, we call to the attention of the court that on defendant's own contention, namely, that it loaned ₱75,000 on the property, and that it was sold at sheriff's sale in the year 1906 for ₱64,000, of itself seems to meet the jurisdictional requirement without resort to the further positive proof in the record.

Right of Review Through an Appeal.

Respecting that part of the motion which moves a dismissal of the appeal because it will not lie to review a judgment of the Supreme Court of the Philippine Islands rendered in a proceeding originating in the Court of Land Registration, it is true, as contended in support of this motion, that in several recent decisions of this court it has been

held that the appropriate method of invoking its appellate jurisdiction in such cases is by writ of error, and not by appeal (Cairno *vs.* Insular Government, 205 U. S., 403; 212 U. S., 449; Tiglo *vs.* Insular Government, 215 U. S., 410, and Jover Y. Costas *vs.* Insular Government, 221, U. S., 623). It will be noted that in each of these cases the only question involved was one of title claimed against the opposition of the Insular Government.

In the present case the plaintiff in error, evidently being in doubt whether she should invoke the appellate jurisdiction of this court, because of the peculiar situation of the parties under the proceedings had in the several actions hereinbefore recited, resorted to both methods. The right of redemption in the plaintiff in error, sought to be preserved and respected through the appeal and writ of error in the present case, resulted from proceedings not within the cognizance of the Court of Land Registration, and the right of accounting in and to all of the property necessarily involved if the right of redemption is upheld, and particularly as to the Hacienda Las Pasios, should the registration of the defendant's title as to that property be denied, present matters not within the cognizance of the Court of Land Registration, and this may have influenced the action taken.

In this connection we invite the attention of the court to section 4 of the act of September 6, 1916 (39 Stats., 726), wherein it is provided:

> "That no court having power to review a judgment or decree rendered or passed by another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out, but when such mistake or error occurs it shall disregard the same and take the action which would be appropriate if the proper appellate procedure had been followed."

It results that whether considered as on appeal or by writ

of error, the case is properly before this court for consideration upon the merits.

Motion to Affirm.

Defendant in error, not content with his motions to dismiss both the appeal and writ of error taken in this case, has moved affirmation of the judgment below upon the ground that the appeal and writ of error was sued out for delay only, and that the questions presented are so frivolous as not to need further argument.

In resisting this motion, we deem it unnecessary to present the full case of the appellant in error at this time. We fail to see however, how delay can work to the disadvantage of the defendant in error, especially as it has now, and has had, full possession and full control of management over both the properties here in question for many years, for which it has made no accounting, and from which it has received profits up to the present time amounting to fifty, and perhaps a hundredfold, reckoned on the amount advanced to the plaintiff in error, under which advances it has sought through every device known to the law to deprive the plaintiff in error of her title to the valuable property in question.

Regarding the suggestion of counsel in the motion to affirm, that the questions raised by the plaintiff in error are frivolous, we say that they present the following:

LEGAL POINTS ON THE MERITS.

I.

Defendant's title, if any, by foreclosure, is but to the Hacienda San Jose proper of 465 hectares.

The defendant in error by its petition filed with the Land Court of Registration asked registration in its name of 602 hectares of land, which, by the plat of survey accompanying the same, show that it embraced the two properties of the plaintiff in error known as the Hacienda San José proper of 465 hectares, and the Hacienda Las Pastos of 137 hectares, lying side by side.

Opposition was entered unless title was to be granted expressly reserving in the plaintiff in error the right to redeem the same as accorded at the time of the sale of the real property under the mortgage deed. As will be later explained, a decree of title in the applicant company to the entire property was immaterial, provided only that the right of redemption in the opposition was recognized, and this thought perhaps influenced counsel representing the plaintiff in error when filing her original opposition to the registration. On denial of her right, the opposition applied, and it became incumbent on the applicant to make proof of the title sought.

The purpose and jurisdiction of the Land Court of Registration was not to *create titles,* but to decree registration of titles when the ownership was established. Therefore, as before stated, petitioner was required to *prove* title to the land for which registration was claimed.

In support of title to the 602 hectares claimed, the applicant company offered, (*a*) Sheriff's deed in its favor, specifically limited to the Hacienda San José proper of 465 hectares, and (*b*) a conveyance of certain additional lands by

one Andreas Mondragon, the latter being to the parcel of lands of 147 hectares, known as the Hacienda Las Pastos.

It is now conceded by the applicant company that Mondragon was without right to the land conveyed by him, so that source of title to any portion of the 602 hectares claimed is eliminated. This leaves as applicant's only muniment of title the sheriff's deed secured on the foreclosure proceedings, and it was incumbent upon the applicant *to prove* that the whole area applied for, namely, 602 hectares, *was included* in the mortgage instrument, and was actually transferred in the foreclosure proceedings.

There is not a scintilla of evidence in the record showing title in the applicant to more than 465 hectares, 33 ares, and 82 centares of land, and we challenge any showing in the record to the contrary.

Eliminating the Mondragon deed, which it is admitted conferred no rights whatsoever, the ownership of the entire area sought to be registered rests, as before stated, upon such title as the applicant acquired under the foreclosure proceedings.

As the basis for the foreclosure title, the application for registration was accompanied by a copy of the Spanish Grant (Titulo Real) in favor of Romana Gauzon, dated December 26, 1894. This grant recites that it is for 465 hectares, 33 ares, and 82 centares, and contains the boundaries of the tract granted. (See Document Exhibit No. 3, Rec., p. 3.)

From this instrument it will be seen that a specific tract of ground with well-defined natural boundaries and area was granted. It was this same property under the same area and description that was mortgaged to the defendant company by the appellant in error. The entire mortgage proceedings, resulting in the final step, being the sheriff's deed of the property to the representative of the defendant company, followed the same description as given in the Spanish grant, likewise limited in area, establishing beyond the per-

adventure of a doubt that the land acquired by the applicant in foreclosure was the same land, neither more nor less, than that called for by the Titulo Real, amounting to 465 hectares, 33 ares, and 82 centares, *and is the only land to which the applicant company has shown any title whatsoever in the registration proceedings.*

This is not of that class of cases where a larger acreage is found within natural boundaries mentioned in the grant than the acreage therein given. Further, the plaintiff in error did not pretend to claim that the Hacienda Las Pastos, of 137 hectares, was included in the area covered by the Titulo Real. On the contrary, she expressly testified that this extra 147 hectares was not included in her Titulo Real. In reply to interrogatories by the attorney for the Insular Government, the plaintiff in error testified as follows: (Rec., pp. 103, 104, 105).

> "Sepulveda (Fiscal): Do you know the area of the land which you allege yourself to have been the owner?
>
> "A. The whole land on the hacienda toward the mountain? More than 600 hectares.
>
> "Q. Since when did you know that the area was 600 hectares?
>
> "A. Because the hacienda was surveyed and we consider the part toward the mountain to be more than 140 hectares.
>
> "Q. Quite so; since when did you know of this measurement, this superficial area?
>
> "A. Since the year 1894 or 1893.
>
> "Q. After you had obtained the real title from the late government?
>
> "A. Afterwards.
>
> "Q. So you know what area is set out in your title?
>
> "A. Yes sir.
>
> "Q. Why did you not ask for the excess over that contained in your title since you say that you now have this land?
>
> "A. I wished to apply for it, but things so happened that I could not.
>
> * * * * * * *

"Seva: When you were granted the real title was the property measured or not?

"A. It was measured.

"Q. Who measured it?

"A. Don Eduardo Fuentes.

"Q. And how did he measure it, do you know?

"A. By the eye apparently. They were more than half a day measuring it.

"Q. Was a plan made from that measurement or survey?

"A. Yes, a plan was made, but it was afterwards sent to me.

"Q. Where is that plan now?

"A. The Tabacalera has it.

"Q. When did you give it to the Tabacalera?

"A. When I mortgaged the property."

* * * * * * *

"Q. You remember the surveyor named Hernandez or Fernandez?

"A. Yes sir.

"Q. Did you have this property measured again?

"A. I remember that I had the hacienda measured at another time.

"Q. About when was that?

"A. In 1905 or 1906.

"Q. When you made this survey what was the approximate result of Hernandez' survey?

"A. It turned out to be 600 hectares, the hacienda and mountain lands together.

The mortgage to the Tabacalera Company was executed December 10, 1904. This new measurement, which the plaintiff in error stated as above turned out to be 600 hectares, included both the Hacienda San José proper, and also the monte or mountain land, known as Las Pastos, and was made in 1905 or 1906, being subsequent to the mortgage.

Only one conclusion can be drawn from the above testimony, that is, that the hacienda or land mortgaged to the Tabacalera Company was that covered by the concession (Titulo Real), and that this mountain land (137 hectares),

commonly known as Las Pastos, was not included in the description. The property acquired by the defendant company under the foreclosure sale was stated to contain 465 hectares, and was described as being within well-defined natural boundaries. The property sought to be registered contained 602 hectares with entirely different boundaries. It is imperative, therefore, that the applicant prove that the 602 hectares applied for, constituted *the same land* covered by the sheriff's deed on foreclosure; that is, that the boundaries described in such deed and the boundaries described in the application were one and the same.

Aside from the presentation of the Titulo Real and the mortgage documents the only evidence offered by the applicant in support of the petition for registration was one or two witnesses to prove that this additional 147 hectares belonged to Mondragon, and not to Romana Gauzon. There is not a particle of evidence in the record tending to identify the boundaries described in the application for registration with those set forth in the sheriff's deed, nor is there any evidence whatsoever to show that the land applied for was in fact the land acquired on the purchase at foreclosure sale. It was later urged that the plaintiff in error had established that *she* was the owner of the additional 147 hectares, but this would not give the applicant company *title* thereto without showing that such land was included in the mortgage and covered by the foreclosure sale. Moreover, the plaintiff in error's testimony was in rebuttal of Mondragon's claim, and not in proof of the applicant's title. Her testimony furnished no evidence to identify the boundaries set out in the application for registration with those of the sheriff's deed.

There is no evidence that the applicant company ever took possession of the 147 hectares known as Las Pastos under the sheriff's deed. The mortgage sale was had September 12, 1906. June 22, *1908,* Andreas Mondragon executed deed purporting to convey to the applicant company this 147 hectares. The company was a party to this deed, signing the

same through its representative. As part of the description, we have the following: (Rec., p. 5).

> "That in the barrio of Subungcogon, municipality of San Carlos, Province of Occidental Negros, Philippine Islands, he is in the possession of, in the capacity of owner, and has enjoyed full dominion, acquired through proper and legal titles for over two years, but that the former owners from whom he acquired them had been in the possession of and had cultivated them under the same title since time immemorial, certain lands under cultivation situated to the north of the Hacienda San José, which hacienda is situated in the Sm*a*me district and is owned by the Compania General de Tabacos de Filipinas, with which company he has agreed to alienate and transfer thereto a strip of the said land situated on the northern side of the said Hacienda San José; this said strip is bounded on the north by the rest of the lands of Don Andres Mondragon; on the south and east by the said Hacienda San José belonging to the Compania General de Tabacos de Filipinas, and on the west by the aforesaid Hacienda San José and lands belonging to Sr. Mondragon."

This testimony is against interest, and must be taken as true. It proves, first, that in 1908, the applicant company did not consider the land bought from Mondragon as part of the Hacienda San José acquired on foreclosure, and second, that the land possessed by the applicant company was to the *south* of the 147 hectares, the subject of Mondragon's deed.

Had the company believed in 1908 that this 147 hectares formed part of the Hacienda San José acquired by it on foreclosure, the natural thing would have been to recite that fact, and to remove any possible claim or connivance with Mondragon to have taken a quit-claim deed from him of any interest he might have in the estate.

The attorney who represented the defendant company in the proceedings on the application for registration of title,

made the following statement with regard to the 137 hectares, the subject of Mondragon's deed: (Rec., 64).

> "In the second place, the number of hectares which appears in the title of composition with the state in the name of the objector Romana Gauzon is specifically mentioned in the record, and we claim that all the difference of 137 hectares which exists between the number of hectares granted by the government to Dona Romana Gauzon and the number of hectares stated on the plan, is owing to portions of land which were sold by Sr. Mondragon to the petitioner. I should like therefore to have Mr. Seva specify his opposition with respect to this, to the exclusion of the 465 hectares which the Spanish government granted to Dona Romana Gauzon; what is the claim of Dona Romana Gauzon with regard to these 137 hectares? Because the Attorney-General comes in and objects on the part of the government and claims that the whole of the difference between the total area shown on the plan and the 465 hectares obtained by Dona Romana Gauzon by composition with the state, belongs to the government. Now we desire to know if Dona Romana Gauzon claims this difference or excess over the 465 hectares, jointly with the Attorney-General, or what it is she claims with regard to this difference."

The above statement of counsel is absolutely inconsistent with any suggestion that the petitioner believed or pretended that this 147 hectares formed part of the Hacienda San José, mortgaged to it, and purchased on foreclosure.

Again, when the Mondragon deed was offered in evidence, petitioner's counsel, in answer to the objection that it was immaterial, responded: (Rec., 79).

> "As to the document being immaterial, as Mr. Seva alleges, it is perfectly material because the original title specifies 400 hectares and the balance was bought by the petitioner from Sr. Mondragon."

Further objecting to the Mondragon deed, counsel for the objector, being the plaintiff in error, said: (Rec., 80).

> "I must also state as an objection to this writing that the objector also claims to be the owner of the land that Mr. Mondragon claims to have transferred to the Compania General de Tabacos, *and she claims it by right of possession and uninterrupted cultivation since the year* 1884, *that is to say, for* 26 *years.*"

It is thus clearly shown that in the registration proceedings it was not claimed or pretended on the part of the petitioner that this 147 hectares formed a part of the Hacienda San José proper (Titulo Real).

In offering Exhibits "B" and "D", being the Titulo Real, and the sheriff's deed, petitioner's counsel said: (Rec., 68).

> "I make a formal offer of this exhibit B appearing in the record; it is a royal title issued by the government to Romana Gauzon, in which it appears that the area of the said Hacienda San José at the time the title was issued, at least legally, was 465 hectares and some centares. I make a formal offer of this Exhibit D, a certificate of the provincial sheriff dated September 12, 1906, referring to the auction sale of the Hacienda San José inscribed in the registry of deeds."

The only "hacienda" or property described in the registry was the Titulo Real, calling for 465 hectares. The above quotations are made solely to indicate that at the time of the trial the applicant or petitioner's attorney did not pretend that the Hacienda San José included other or different lands from that covered by the Titulo Real, that is, 465 hectares and a fraction.

As before stated, in the proceedings for registration of title, the applicant was seeking registration, whereas the principal claim of the objector was that she was insisting that such registration, if made, should be subject to her right of redemption. The evident purpose, therefore, of the

applicant in claiming through the Mondragon deed was a hope or belief that it could secure a clear title to the area covered thereby, even though the objector prevailed under her claim of right to exemption in the Hacienda San José proper.

We think it can be safely stated that had the right of redemption been recognized and the title derived through Mondragon been held good we would not have found the defendant company insisting that the 147 hectares covered by the Mondragon deed formed part of the tract purchased by it on foreclosure. The objector's position was altogether different, provided her right of redemption was recognized by the court. It made no difference, as heretofore stated, as to whether the 465 hectares or the 602 hectares were registered in the applicant, provided only she proved that the 147 hectares did not belong to Mondragon. The redemption price in either event, would be the same, that is, the purchase price paid by the applicant, plus costs and interest.

When the brief filed on behalf of the defendant company in support of the present motion is considered in connection with the record made in this case it will be found that the argument in support of defendant in error's title is based entirely on the attitude of the plaintiff in error growing out of her peculiar relations to the land, the subject of the application for registration. Quotations are made indicating a claim by her that she is entitled to redeem the whole of the 602 hectares. She certainly would have been entitled had her right to redeem been recognized, and the proofs sustained her contention that the whole of the 602 hectares applied for was or had been her property. This constitutes, however, no proof of title in the applicant to the land claimed. The fatal defect in the applicant's case in this particular is, that it attempts to substitute declarations of the objector's counsel, made when referring to the right of redemption, for *proof of title* in the applicant company to the whole of the land applied for.

As heretofore stated, there is not a scintilla of evidence in the record showing title in the applicant company to more than 465 hectares, 33 ares and 82 centares of land, and it is upon the *record* this case must be decided.

In the first decision of the Supreme Court upon the application for registration, being that of February 10, 1912 (Rec., pp. 129, 131), the court, in referring to the showing in support of the application for registration of title to the 146 hectares, commonly known as the Hacienda Las Pastos, said:

> "It is doubtful if, upon the face of its own proof, the petitioner has established such a title to the land as would warrant its registration under the law; but that doubt, *if there be one*, is resolved against the company when we advert to the proof presented by the respondent, Romana Gauzon. * * * We are satisfied, upon the whole case, that the clear weight of the evidence, in fact the overwhelming preponderance of the evidence, is in favor of the contention of the respondent that she has demonstrated a better right to the land in question than has the petitioner in this case."

Before the case was remanded on the petition for rehearing, a new opposition was filed, which was in line with the suggestion of the Supreme Court in its decision on the motion for rehearing, and upon the new trial the lower court found in referring to the opposition (Rec., p. 206):

> "But even though it were necessary to overrule her opposition on account of this inconsistency, yet the evidence adduced by the petitioner has not sufficiently demonstrated his right to the title he claims with regard to the said lands purchased from Andres Mondragon. And in view of the notable difference between the area of the land described in the royal title and that contained in the plan at folio 993, it would be rash to maintain that the portion in question is a part of the land that was granted by the said royal title, because the proofs submitted do not justify such a conclusion."

In the second decision of the Supreme Court, that of November 20, 1914 (Rec., pp. 210, 211), from which the appeal and writ of error were taken, the court found "from the record in this case, it would appear that, so far as Romana Gauzon was concerned, the hacienda was made up of two portions; one portion, consisting of 465 hectares, 32 ares, and 82 centares, was obtained by a royal grant, while the remaining portion, namely, 146 hectares, was obtained by her from other sources not disclosed." And then, because of an alleged inconsistency between the attitude of respondent's counsel on the first and second hearings, finds that, as between the parties, that the respondent's "admissions and position in the first trial were so unequivocal and so indirectly in opposition to those that she now assumes and takes, that we believe the merits of the controversy are entirely with the petitioner" (Rec., p. 213).

As stated at the start, the purpose and jurisdiction of the land court is not to *create titles*, but *to decree registration of titles* when the ownership is established, and we assert with confidence that there is no showing in the record made in this case that, under any possibility, could be held to *prove* a title in the defendant company to more than the land obtained by the defendant under the royal grant, the Titulo Real.

II.

The mortgagor is granted a year to redeem after sale under foreclosure proceedings, in accordance with section 257 in connection with sections 463 to 473 of the Code of Civil Procedure.

The right of a judgment debtor to redeem, within a year, lands sold under an ordinary execution sale, is specifically provided for in the Civil Code of Procedure of the Islands. (See sections 463, 464, and 465.) These sections are copied

verbatim from sections 700, 701, and 702 of the California Code of Procedure.

Section 257 of the Code of Civil Procedure of the Philippines is as follows:

> "Sale of the mortgaged property. When the defendant, after being directed to do so, as provided in the last preceding section, failed to pay the principal, interest and costs, at the time directed in the order, the court shall order the property to be sold in the *manner and under the regulations* that govern sales *of real estate under execution;* * * * The sale, when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action, and to vest their rights in the purchaser. * * *"

Section 726 of the California Code of Procedure, relating to mortgage foreclosures, provides:

> "The court may, by its judgment, or at any time after judgment, appoint a commissioner to sell the encumbered property. * * * If the court appoints a commissioner for the sale of the property, he must sell it in the *manner* provided by the law for the sale of like property by the sheriff upon execution; and the provisions of chapter one, title nine, part two, of this Code are hereby made applicable to sales made by such commissioner, and the powers therein given and the duties therein imposed on sheriffs are extended to such commissioners."

It will be seen that the provisions of the California Code are substantially identical with section 257, above quoted.

The California Code provides that the sale in mortgage foreclosures shall be made "in the *manner* provided by the law for the sale of like property by the sheriff under execution," and that the *powers* and *duties* conferred upon sheriffs in execution sales are made applicable to sales in mortgage foreclosures; that is, such officers shall be governed by the same *regulations* in one case as in the other.

In Tanguinally *vs.* Quiros, 10 P. R., 360, the Supreme Court, in interpreting certain sections of the code, likewise taken from the California Code, said (Rec., p. 363):

> "It is not probable that the compilers of our code, by the restrictive language of these sections, sought to change the general rule as laid down by the cases cited from the Supreme Court. Indeed, *it is to be assumed that they did not,* as these sections were taken by them bodily from sections 1908 and 1911 of the code of the State of California, of which they are reproductions, and which have been construed by the courts of that State in harmony with the general rule.
>
> "Although not binding upon us, this interpretation of the California courts of the sections of their code reproduced in our own *must have been known to our* legislators when adopting them, and leave it open to us to accept as a rule in this jurisdiction of the doctrine cited from the cases of the Supreme Court of the United States."

The California courts have uniformly held that the right of redemption exists in the mortgage debtor equally with a debtor on ordinary execution sale.

In Kalhoon *vs.* Laffin, 2 Cal., 595, it was said:

> "I think the language of this act is sufficiently comprehensive to include within its design sales of real estate under decrees of foreclosure of mortgages; a contrary doctrine might be held by *ingenious and technical construction* of that portion of the act which regulates executions upon judgments. But in all such cases I consider it safest to look to the obvious policy of the law, and to maintain such policy against a mere hesitation, caused by the inapt language of the act. This is also the application of the common law principle, which declares *that remedial statutes shall* be beneficially construed."

(See also Harlan *vs.* Smith, 6 Cal., 173; McMillan *vs.* Richards, 9 Cal., 365, 412; Gross *vs.* Fowler, 21 Cal., 392; Guy

vs. Middleton, 5 Cal., 392; Stout *vs.* Macy, 22 Cal., 647; Reynolds *vs.* London, 128 Cal., 16, 21; Duff *vs.* Randall, 116 Cal. 226.)

It will be noted that the decisions referred to hold that "Redemption applies equally to sales under decrees in mortgage cases as to sales under ordinary judgments at law." This was under the old practice act. Thereafter, under their present Code, it was provided, as does section 257 of the Civil Code of Procedure of the Philippines, that mortgage sales shall be made in the same *manner and under the same regulations* as applied to ordinary execution sales.

When the legislators adopted the sections of the California Code in the Civil Code of Procedure of the Islands, "it is to be assumed" that the interpretation given by the California courts to such sections must have been known to them.

In the decision of the Supreme Court of February 10, 1912 (Rec., pp. 129, 135), in considering section 257 of the Code of Civil Procedure, the court said:

> "We are of opinion, therefore, that when, in the law relating to the foreclosure of mortgages, reference was made to the provisions of the Code relative to the sale of property under execution, it was intended, there being no express words to the contrary, to include in such reference only such provisions as referred to the mere management and conduct of the sale—the mere ministerial acts which must be performed in order that the sale be legal—and not to those provisions which relate to the substantive rights of the parties before or after the sale has been consummated."

We do not believe this to be a correct interpretation either of the legislative will or of the language of the law.

Section 463 C. C. P., in providing for the sale of real property upon execution, provides that the officers making the sale shall give the purchaser a certificate of sale containing:

1. A particular description to the real property sold.

2. The price paid for each distinct lot or parcel.

3. The whole price by him paid.

4. *The date when the right of redemption expires.*

The above are the *"Regulations"* governing an officer in giving effect to an execution sale.

Section 257, applying to mortgage sales, not only says that the manner (the form or procedure) of sale shall be the same, but it says that the court shall order the property sold *under the regulations* that govern sales of real property under execution.

One of these regulations, among others, is that the officer executing such sale shall give to the purchaser a certificate containing the date when the right of redemption expires. The first three items referred to above are undoubtedly included in his certificate. *Why not the fourth?* If the statute simply contemplated that the manner or procedure of the sale should be the same and nothing more, then why should there be added the words *"and under* the regulations that govern sales of real estate under execution."

A case directly in point here, and to which we particularly invite the attention of the court, is that of *Stone vs. Bassett,* 4 Minn., 298. In the court's opinion in that case it was said:

> "If, then, there be but one form of action, and the statutes concerning civil actions apply as well to suits in equity as actions at law, is there any reasonable ground for distinguishing sales of real estate made by order or judgment of the court upon proceedings for the foreclosure or satisfaction of mortgages from other sales upon execution? Does not the same general rule apply to all sales of real estate upon an execution against the property of a debtor?

The sale is but the result of the judgment of the court in either instance. In the one case there is a general judgment against the party, enforced by execution against his property generally and directed to the sheriff of the country. In the other there is a judgment for the sale of a particular property in satisfaction of a debt, enforced by a special execution directed to the sheriff or other person appointed by the court to execute it. Why, then, should the right of redemption attach to a sale upon a judgment in the one instance and not in the other? Does the statute make the distinction? The statute provides that upon a sale of real property on execution when the estate is less than a leasehold of two years unexpired term, the sale shall be absolute but that in all other cases the property is sold subject to the redemption therein provided. And is not a sale of mortgaged premises under judgment or order of the court a judicial sale. The act of May 5, 1853, expressly says that proceedings for the foreclosure and satisfaction of mortgages are to be governed by the proceedings prescribed in civil actions. Shall we then adopt all the provisions of the statutes concerning civil actions and proceedings, and the rights of parties thereunder, both before and after judgment, except those alone which relate to the right of redemption? We do not think there is any warrant for such distinction.

"* * * I can see no great injustice in a statute which permits a redemption upon the terms of repaying the purchase money with interest at a rate equal to or greater than the usual legal rate. Indeed courts of equity have frequently interfered when mortgages have been pressed in time of general embarrassment, and deferred the sale or time of redemption until the difficulties were removed."

It should be noted that under the Minnesota statute in relation to mortgages, it is simply provided that "the proceedings" shall be the same as prescribed in civil actions, language which in our opinion is much less forcible than section 257 here under consideration, which provides that the mort-

age sale shall be had in the *manner and under the regula-ons* which govern sales on execution.

Under the heading "Redemption," in consideration of the bject of mortgages, it is said (vol. 27, Cyc., p. 1800):

> "Statutes having the right of redemption after foreclosure sales are to be construed liberally; while their terms are not to be extended by implication beyond what the legislature has authorized, the construction in any case of doubt or ambiguity *should be in favor of the right to redeem.* They should not, however, be interpreted retrospectively unless the language employed plainly requires it. Such statutes apply only to sales made under decrees or judgments of the courts; but where the right is given to redeem from judicial sales in general or sales on execution, *the statute applies as well to sales made in the enforcement of foreclosure decrees* as to those made under any ordinary judgments."

McMillan *vs.* Richards, 9 Cal., 365; Farrell *vs.* Parlier, 50 s., 274; Stone *vs.* Bassett, 4 Minn., 298, and Henderson *vs.* wry, 5 Yerg. (Tenn.), 240, are cited in foot-note in supt thereof.

It may be safely assumed, therefore, that the above repreits the general attitude of the courts in dealing with the estion.

The expression in section 257 that sales in mortgage foresures shall be made "under the regulations that govern es on real estate under execution," unquestionably means at such sales shall be made *under the provisions of law ich govern in such a case.*

In Donovan *vs.* Territory, 2 Pac., 532, the court said:

> "It is provided by sec. 1869 of the Revised Statutes of the United States that writs of error shall in all cases be allowed from the final decision of the district courts. *Under such regulations as may be prescribed by law.* The regulations to be prescribed by law, we take it, mean the *rules of law by which the right is to be exercised.*" (Italics appear in decision.)

In re Higbee, 5 Pac., 693, the court, in construing the right of a territorial legislature to grant a divorce, said:

> "The Federal Government is one of enumerated and delegated powers and possesses no others except as are necessary to the exercise of those expressed. The second clause of the third section of the fourth article of the Constitution of the United States is: 'The Congress shall have power to dispose of and make all needful rules *and regulations* respecting the territory and other property belonging to the United States.' 'No one,' says Judge Story, 'has ever doubted the authority of Congress to erect territorial governments within the territory of the United States under the general language of this clause.' 2 Story Constitution, Sec. 1325. Rules and regulations, in a legal sense, mean LAWS."

We believe a careful reading of the entire Code of Civil Procedure in the Philippines will show that the legislators, in using the expression "under the regulations which govern, etc.," had reference to the provisions of law applicable.

As stated in Stone *vs.* Bassett, *supra*, hereinbefore quoted from, there is no more reason in principle or justice why the property of a judgment debtor sold under execution be subject to redemption, than there is that the property of a mortgage debtor, likewise sold on execution to satisfy the mortgage debt, should be subject to like redemption. The stress of necessity presses upon both alike.

Mortgages are taken, as a rule, at from forty to sixty per cent of the value of the property. The land is not purchased, but is simply secured for *money* loaned. No real injustice is worked upon the mortgagee through giving the mortgage debtor one year from date of sale within which to pay this money and redeem the property. If redeemed, the mortgagee gets back his full purchase price and costs; he gets back any taxes or other charges on the land he may have paid, and he gets besides *one per cent per month upon his money.*

As stated by the California court, in Kalhoon *vs.* Laffin, *supra,* the statute is a "remedial" one, and every principle of justice and fair dealing requires that it be "beneficially construed." If the language of the statute is open to two possible constructions therefore, that interpretation should be had which favors the right to redeem. Through stress of circumstances, the owner may lose his property for a tittle of its real value, while as to the mortgagee it is provided that he shall be paid his purchase price in full, *together with usurious interest, before being called upon to surrender the property.*

While it may be true that the right to redeem is a statutory one, we contend not only that the legislators intended to confer such right by the provisions of section 257 of the Civil Code of Procedure, but that it does confer such right, particularly when read in the light of the construction given the law from which it was taken. We further contend that, in any event, such action is clearly susceptible of the interpretation here claimed, and being remedial in its nature, this court, under the authorities, should read it broadly rather than technically.

No case is cited by the defendant in error in support of his motion where the right of redemption was denied a mortgagor under a statute similar to the one here under consideration. On the other hand, we have cited numerous cases where such right has been upheld.

In the decision of the Supreme Court of February 10, 1912 (Rec., pp. 129, 133), the court, in considering the effect of a decree of foreclosure or judicial sentence barring the equity of redemption or equitable right of the mortgagor, under the Code of Civil Procedure of the Islands, quotes at length from the decision of this court in Parker *vs.* Dacres (130 U. S., 43, 47). In that case the plaintiff based his right to redeem under certain sections of the Civil Practice Act of the Territory of Washington, but it will be noted this court specifically refrained from passing upon the question

as to whether the statute gave the right of redemption, for on page 47 it was said:

> "In the view we take of this case it is unnecessary to express an opinion whether the provisions relating to sales under execution, properly interpreted, govern a right of redemption after sale under a decree of foreclosure."

The provision that the mortgagor shall have until the first day of the succeeding term in which to pay the judgment confers no particular preference over other debtors, and in any case operates unequally. A judgment might be rendered during the opening days of a term, or on the closing days. Moreover, parties are ordinarily given until the closing of the term to file their bill of exceptions, and executions cannot be taken in any case until the time for filing such bill has expired. (C. C. P., 144.)

It is true that section 257 provides "the sale when confirmed by decree of the court shall operate to divest the rights of all the parties to the action, and to vest their rights in the purchaser." This is not peculiar to foreclosure sales however, but applies to sales under execution as well. The title passes in both cases.

In Duff *vs.* Randall, *supra*, the court said:

> "Although the right of a mortgagor to redeem the mortgaged premises is not cut off until the expiration of the time allowed for redemption, yet the purchaser at a sale under the judgment rendered in the foreclosure suit acquires the same interest in the property sold as does a purchaser in property sold under an ordinary money judgment. 'Upon the sale the purchaser acquired . . . the right, title, interest, and claim of the debtor thereto' (C. C. P., Sec. 700), and only the right to redeem from this sale is left in the mortgagor. If a redemption is made by the mortgagor it is not from the lien of the mortgage, but from the sale under the judgment, and the amount which he is required to pay under such redemption is not the amount of the mortgage, but

the amount for which the property was sold. Prior to the entry of the judgment the mortgagor holds the title to the property subject to the lien of the mortgage, and after the judgment is entered, and before the sale, he holds it subject to the lien of the judgment; but after the sale he has only a right of redemption, while the purchaser has *the entire beneficial interest* in the property, subject to be defeated by a redemption from the sale: 'The execution of the deed gives to the purchaser at the sale *no new title* to the land purchased by him, but is merely evidence that his title has become absolute.'" (Robinson *vs.* Thornton, 102 Cal., 680.) * * *

"The purchaser is entitled to all the rents and profits of the property sold, or the value of its use and occupation from the time of the sale until the redemption (C. C. P., Sec. 707), and if no redemption is made he is entitled to retain these rents and profits without any obligation to account therefor to the mortgagor."

The above is cited and quoted in Reynolds *vs.* London, 128 Cal., 1620.

The right of a mortgagor to redeem his property within the prescribed time after execution is no novel proposition. On the other hand, it is a right granted by the great majority of our States, and is there recognized as a just and equitable provision of law (Jones on Mortgages, secs. 1322, *et seq.*).

We respectfully submit, therefore, that the court below erred in its first decision in holding that the right of redemption on mortgage foreclosures does not exist under the Philippine Code.

In concluding this part of the argument we invite the attention of the court to the decision of the Supreme Court of the Philippines, dated October 23, 1916, in Ruperto Montinola *vs.* Juan Tuason, receiver for the liquidators, and José Locsim, receiver of the attached property. In this case it was held:

"When a mortgagee obtains a judgment upon his mortgage on real property and recovers the amount

due thereon by an execution upon judgment, instead of by the methods provided for the recovery of such judgment and the land is sold under said execution, the mortgagor or his successors in interest are entitled to redeem the land in accordance with the provisions of the Act No. 190" (syllabus).

(See section 464, Code Civil Procedure.)

A copy of this decision is hereto attached as an appendix.

The judgment of the Court of First Instance, in the case on which the Supreme Court rendered decision April 13, 1909, *supra* (Rec., p. 46), refers to defendant's Exhibit No. 5, from which the amount realized from the sale in August, 1906, of the respondent's property not included in the mortgage was ascertained. The exhibit referred to is the sheriff's return of the sale. Unfortunately, this was not offered in evidence with the judgment, but we think there is clearly enough in the record to show that the ₱3,055.00 was derived from a sale of property not included in the mortgage, which, in view of the recent decision of the court below, just referred to, becomes important.

We believe it would be extremely unfortunate if, in a country like the islands, where wealth is largely agricultural, and where people must rely upon their real-estate holdings to secure money for development purposes, the courts should establish a doctrine which deprives mortgage debtors of the limited term of one year in which to redeem their property from money-lenders. In many respects their rights are greater than those of ordinary judgment debtors; certainly, as hereinbefore pointed out, there is no valid or just reason why one should be chosen and the other left without such limited protection.

III.

The memorandum of sale on foreclosure, granting mortgage debtor one year from date of sale within which to redeem, constituted a contract of purchase and sale conclusive upon the purchaser.

In the case at bar the mortgaged premises were sold subject to the right of redemption. The officer of the court, acting upon what he understood to be the law—which we believe *is* the law—recited in the document of transfer that the mortgagor would have one year from the date of the sale, September 12, 1906, within which to redeem the property. The mortgagee (who was the purchaser) entered no objection to the conveyance in this form; had it recorded in the registry of property; thereafter, in a proceeding to collect other moneys from the mortgage debtor, levied an attachment upon this right of repurchase reserved to the mortgagor, and, after several years, erroneously assuming that the period to exercise the right had expired, obtained a final deed from the ex-sheriff in attempted compliance with section 472, C. C. P.

Thereafter the court, in dealing with questions raised in the attachment suit, entered an order directing the right of repurchase (redemption) be suspended until the judgment upon the money claim should become final. An appeal was taken in such action by the defendant company (being the mortgagee and purchaser at foreclosure sale), attacking this order of the court suspending the right of repurchase, assigning it as an error, and the Supreme Court, in passing upon this assignment of error, said:

> "The order of the court relating to this right of repurchase is the outcome of the attachment of the said right; the attachment was admitted by the appellant in saving in its brief (p. 10): 'This attachment matters nothing * * * nor by our attachment of it

(the right to repurchase) nor by our admission would it be created.' Whether it should not legally exist and whether it was not created, are questions to be decided by the court only; but we have to deal with a juridical act which, so long as it is not declared null and void, as such a *juridical act serves for something, and, with respect to the parties who have executed it and consented thereto, is of course efficient and binding in its effects and consequences.*

"If it was actually attached the same as was the sugar-cane, at the instance of the appellant, the latter cannot evade the consequences and efficiency of its own act, nor did the court exceed its powers, in making use of that conferred upon it by the said section 436, which deals with the final disposition of attached property.

"With regard to the suspension of the term of the right to repurchase, by virtue of the conclusive presumption: '16—That all the matters within an issue in an action were laid before the court and passed upon by it;' and '31—That the law has been obeyed,' there being no proof or allegation to the contrary, this court must find that the court below, considering that the attachment of a right implies an inhibition or privation of its exercise, and that, the right of redemption being attached, it could not be exercised during the period of attachment, and while the litigation was pending, could, by virtue of the principle that a prescriptive term shall not run against him who cannot act, fix the period during which the legal term for the exercise of that right which was suspended by reason of its attachment should not run."

(See Tabacalera Company *vs.* Gauzon, 13 P. R., 481.)

If the act of the sheriff in reserving this right of redemption in his conveyance to the purchaser is "efficient and binding in its effects and consequences, * * * so long as it is not declared null and void," why should it be treated as of no effect in the present action, *the situation of the parties not having changed one iota interin the said decision of the Supreme Court?* If this action of the sheriff was *then* a "jurid-

ical act," with force and effect "as to the parties who had executed it and consented thereto," *what has vitiated it in the meantime?*

In the present action the defendant company is seeking to register certain property, wherein this sheriff's deed, specifically reserving this right of redemption to the mortgage debtor, is a link in the chain of title. This deed has never been modified in any way, and so "remains efficient and binding in its effects and consequences." The plaintiff in error, in her opposition, asked that in the event the land in question is registered, this right of redemption be made to appear as an incumbrance thereon. If the Supreme Court decided rightly in the action (13 P. R., 481), and we believe it did, then as a logical consequence thereof,—*the situation of the parties remaining unchanged*,—such right of redemption should be respected in the plaintiff in error "so long as it is not declared null and void."

This reservation of the right of redemption was not objected to by the purchaser at the foreclosure sale; it was expressly recognized and acted upon by the trial court in the attachment proceedings; it was declared by the court to be "efficient and binding in its effects and consequences" as between parties who had accepted it and consented thereto. We fail to see therefore, any logical reason for now holding such right to be of no consequence whatsoever.

In this connection, we invite the court's particular attention to the fact that in neither of the decisions of the Supreme Court on the petition for registration, was any reference made to the earlier decisions of the same court that secured in the plaintiff in error the right of redemption given her under the memorandum at the time of the foreclosure sale.

Again, there is no allegation, proof or even pretense, in any part of the record that the reservation of the right of redemption in the certificate was without the authorization of the purchaser or contrary to the agreement with it, and according to elementary principles of law it must be pre-

sumed that the certificate of sale was in accordance with the terms of the bid and the understanding had at the time with the sheriff. *It must be assumed, therefore, that the purchaser sought to buy nothing more than a title defeasible by redemption.*

If the sheriff's interpretation of the law was erroneous, then, in the absence of any allegation or proof to the contrary, the presumption is that the defendant company, under the law, voluntarily agreed to the condition in the contract of purchase and sale granting the right of redemption, because it preferred to further burden the estate with the excessive interest of one per cent per month, required to be paid by the redemptioner. If, on the other hand, the defendant company was also misled by the sheriff's interpretation into granting more liberal terms in the contract of purchase and sale than it otherwise would have done, the error was the result of ignorance of the law, and not of the facts, and would furnish no basis for annulling the contract.

This court must conclude, therefore, that the amount of the company's bid set forth as the consideration in the contract of purchase and sale, was directly influenced by its knowledge that it was not acquiring an indefeasible title, but one subject to the right of redemption. If it be conjectured that the purchasing company may possibly have been ignorant of the right of redemption at the time of making its bid, it still had ample time to withdraw that bid before signing the memorandum or contract of purchase and sale.

The conclusion that the company bid less than it would for an indefeasible title, is confirmed by the fact that it almost immediately afterwards brought its second action for the balance of the claim, and levied an attachment upon the right of redemption. These considerations alone, it seems to us, should deter any court from disregarding the express stipulation for the right of redemption granted under the memorandum of the sale.

Again, if the purchasing company wished to allege and correct the supposed error in the memorandum of purchase

and sale in the sheriff's certificate, it should have done so by motion in the foreclosure case, which was still pending at the time the attempt was made at such correction in the appeal from the judgment in the second action, instead of attempting in the latter case to have the reservation of the right of redemption declared void while still insisting upon the right to hold it under attachment in that same case.

Parks' Annotated Code of Georgia, 1914, section 3283 (section 2750)—Judgment and sale of mortgaged property, provides:

> "When the mortgagor, after being directed so to do, fails to pay the principal, interest, and costs, as heretofore required, and also fails to set up and sustain his defense against the foreclosure of the mortgage, the court shall give judgment for the amount which may be due on such mortgage, and shall order the mortgaged property to be sold *'in the manner and under the same regulations which govern sheriffs' sales under execution, etc.'*"

It will be noted that this Georgia provision of the Code is practically identical with section 257 of the Civil Code of Procedure of the islands here under consideration, and under the Georgia Code the doctrine is clearly established that an agreement, even though verbal, to allow redemption after sale on foreclosure is valid and binding on the mortgagee.

Mathews *vs.* Starr, 68 Ga., 521.

Maye *vs.* Clarke, 69 Ga., 750.

Horne *vs.* Mullis, 199 Ga., 534.

Board of Education *vs.* Day, 128 Ga., 161, and cases cited, and 24 C. Y. C. 69.

It should here be stated that neither the memorandum of purchase of sale nor the decision of the court quoting it is included in the record, but it is assumed that this court will take judicial notice of the decision of the Supreme Court

below under section 275 of the Civil Code of Procedure in the islands or under the doctrine of *stare decisis*.

It should also be stated that the decision of the court below of April 12, 1909, is more essential to the defendant company than to the respondent, because without it there is absolutely no proof or any confirmation of the sale of the mortgaged property which is indispensable to divest the respondent of her title, even supposing no right of redemption existed (section 257 of the Code of Civil Procedure, and Chicago D. & V. R. Co. *vs.* Fosdick, 106 U. S., 57).

IV.

Ratification and Election of Remedies.

The attachment of the right of redemption had other legal effect independent of its creating an estoppel to deny the existence of the right. It operated as a ratification of the reservation of that right as set forth in the sheriff's certificate of sale; it amounted to an election between denying and attacking the validity of the reservation and accepting and ratifying its validity by levying an attachment upon it.

Dolvin *vs.* American Harrow Company, 125 Ga., 699, 707, 708, and cases cited.

Board of Education *vs.* Day, *supra*, 15 Cyc., 259, 7 Encl. P. and Pr., 363, 364, 368.

In re Garver, 176 N. Y., 386.

Van Winkle *vs.* Crowell, 146 U. S., 42.

This ratification and election was again confirmed by the procurement of a deed from the ex-sheriff several years after the sale, in attempted compliance with section 472 of the Code of Civil Procedure. *Such deeds, as clearly expressed by said section, are provided for cases in which the right of redemption of one year after sale is granted.*

V.

The title of the respondent has never been divested, even assuming that no right of redemption existed, and therefore the court erred in granting registration of any part of the land.

Under article 257 of the Code of Civil Procedure nothing short of an absolute confirmation of the sale could divest the mortgagor of his title, and, as before stated, there is no proof of any confirmation of the sale, unless the court takes judicial notice of the decision of the court below of April 12, 1909.

The opposition or answer of the respondent to the petition for registration as amended on the second trial was an unconditional denial of petitioner's title to the Hacienda San José proper under the foreclosure proceedings and to the parcel of 146 hectares, on the ground that it was not included in the mortgage. The burden was upon the petitioner to show that it had acquired absolute title to the property in question. This it could do only by proving an absolute confirmation of the sale in conformity with section 257 of the Code of Civil Procedure.

As before stated, we assume that the court will take judicial notice of the decision of the court below of April 12, 1909, in which confirmation of the sale is recited. The confirmation recited in said decision, however, not only does not divest the mortgagor of her right of redemption, but adjudicates that right to her, and there can be little question but that in view of the suspension of the term of redemption decreed by the court as recited in its decision of April *13*, 1909, another decree of the court finally affirming the sale and setting forth as its basis the dissolution of the attachment and expiration of the suspended term of redemption, would be absolutely essential to meet the terms of section 257,

C. C. P., and thereby divest the mortgagor of her title. In other words, a suspension of the term of redemption by virtue of the decision of April *13*, 1909, during the pendency of the attachment, was in all respects an injunction against the respondent exercising the right, *and against the petitioner's acquiring absolute title until the further order of the court.* That order would consist of the approval of the receiver's accounts covering the disposition of the sugar-cane, which might result, as they actually did, in satisfying the judgment and an order dissolving the attachment, or permitting the petitioner to sell and itself acquire the right of redemption under execution. Under the terms of the decision of April *13*, 1909, there was no way by which the term of redemption could expire without a dissolution of the attachment intervening. The only other way to lose her right was by its sale under execution.

After the decision of April *13*, 1909, was pleaded and offered in evidence, the burden was on the petitioner to avoid its effect by proving that the attachment had been dissolved, and the remaining period of the year had expired and the final deed confirmed. Otherwise, the only interest of the petitioner subject to registration was such as was conferred by the certificate of sale, subject to the right of redemption, the period of which had been suspended until the further order of the court. Even should this court hold the plaintiff in error not to have been entitled to any term of redemption under the foreclosure sale, then it must also hold, should it take judicial cognizance of the decision of April 12, 1909, that the additional confirmation recited in said decision was not sufficient to divest the respondent of title.

If the respondent had not relied upon her right to redeem, she might have consented to the petitioner's motion to set aside the sale, or advanced many good reasons for its annullment. The fact that the petitioner only purported to bid for and paid the value of the property minus the value of the right of redemption, should have been conclusive

objection to the confirmance of the sale had it been made known to the respondent that the confirmation was intended to divest her of all her rights, or, in other words, to confer an absolute interest of an indefeasible title upon the purchaser. It would seem, therefore, to be most unjust to accept that part of the decree which confirmed the sale and disregard that part of it which made it subject to the right of redemption.

The final sheriff's deed, issued by the sheriff in attempted compliance with section 472 of the Code of Civil Procedure, bears date of February 2, 1910. This deed was procured without notice to, or knowledge of, the respondent, and in violation of the decision of the Supreme Court of April 13, 1909, *supra*. The respondent especially pleaded its nullity in her opposition to petitioner's application for registration. *At the time of the issuance of that final deed, the petitioner, according to the uncontradicted affidavits as to the amount in controversy, had realized in profits from the property sufficient to satisfy the entire amount of the judgment.*

VI.

No Tender Necessary.

This court is asked to affirm the decision below, because even conceding that the right of redemption existed, it has long since expired, and the record fails to disclose any tender of the amount of the judgment within the alleged term of the period of redemption.

This brings us again to the consideration of the decision of the court below of April *13*, 1909, 13 P. R., 481, as *res adjudicata*, and to the juridical effect of the attachment of the right of redemption recited therein, independently of the court's conclusion based thereon. If, as seems clear, the decision constitutes *res adjudicata*, both as to the existence of

the right of redemption and of the impossibility of exercising it during its attachment, it is immaterial whether the decision is well founded or not. There seems to be no room for dispute in the interpretation of the decision as to its having squarely decided that the company was estopped by its own conduct from denying the existence of the right upon which it had levied, nor can there be any doubt about the conclusiveness of the decision in so far as it declared the period of redemption suspended until the judgment in that case became final. It seems to us very clear from the very basis of that decision, and that of the judgment of the Court of First Instance in the same action, that both meant when the judgment should become final *in the sense of disposing of the attachment.*

The judgment could not become final so far as the attachment of the right of redemption was concerned, until the receiver's accounts were filed and approved, in order to determine, as hereinbefore stated, whether the funds in his possession were sufficient, as they afterwards proved to be, to satisfy the judgment without resorting to the sale of the right of redemption, and justify the court in dissolving the attachment of that right as it afterwards did.

It thus appears that at the time the judgment of the Court of First Instance was rendered, and at the time of the decision of the Supreme Court of April *13*, 1909, affirming, there were at least two important juridical decrees to be rendered by the court before terminating the litigation or making final in its technical sense the judgment in that case, that is to say, the approval of the receiver's accounts and his discharge as receiver, and the dissolution of the attachment in the event of the funds in the hands of the receiver from the sale of the sugar-cane proving sufficient to pay the judgment. It is therefore perfectly clear that the judgment of the Court of First Instance, which was affirmed by the decision of April 13, 1909, was not a final decision, and that the appeal there-

from might have been dismissed on that ground had the point been raised.

Lodge *vs.* Twell, 135 U. S., 232.
McGurkey *vs.* Toledo, etc., R. Co., 146 U. S., 536.
Covington *vs.* Covington National Bank, 185 U. S., 270.
Clark *vs.* Roller, 199 U. S., 541.

But the Supreme Court of the Philippines, as the sole basis of its said decision of April 13, 1909, judicially determined and assumed as a matter of law that the attachment of the right of redemption not only inhibited its exercise, but suspended the term of that right during the existence of such attachment.

> "On the same principle, a proposition assumed or decided by the court to be true, and which must be assumed to establish another proposition which expressed the conclusion of the court, is as effectually passed on as the matter directly decided" (2 Black on Judgments, 2d ed., 622).

If, as has been universally held, the determination of such an important doctrine becomes a rule of property as to third parties, how much more conclusive should it be as to the same parties in another branch of the same litigation.

As a matter of fact, the record shows that the respondent and her attorneys relied implicitly upon this judicial determination of the Supreme Court, to the effect that she could not exercise her right of redemption until the attachment was dissolved. We cannot conceive, therefore, that this court, finding that the Court of Last Resort of the Islands made a final pronouncement like the above, presumably for the guidance of litigants, can then deprive the respondent of her rights as a reward for faithfully following this solemn declaration of the law.

It thus seems unquestionable that the said decision of

April 13, 1909, is *res adjudicata* both as to the existence of the right of redemption and as to the suspension of this term during the pendency of the attachment.

Independently, however, of the said decision being *res adjudicata* on the subject of the attachment suspending the term of redemption, the principle set forth in that decision as its basis, that is "that a prescriptive term shall not run against him who cannot act," seems to be in accord with other jurisprudence on the subject. (See 19 American & English Ency. of Law, p. 216, Cl. (*b*); Browne *vs.* Sauerwein, 10 Wall., 218.)

Counsel urge in support of the motion, that had respondent really desired to redeem, "the mistaken and futile 'attachment' of the asserted 'right of redemption' was not an obstacle to the making of a tender. The amount for which the judgment was rendered was definite and certain, and the right of an accounting from the receiver, had there been any such equity of redemption in existence, would not excuse the failure to make an effort in good faith to exercise it within the statutory period." In other words, that notwithstanding the attachment, the respondent might have deposited the amount of the judgment in the foreclosure case, and also in the second action, and thereby effected the redemption, not only of the property, but of the right of redemption under attachment, but let us assume for illustration, that the amount of the second judgment was ₱100,000 instead of ₱7,000 and odd, and that the petitioner, in addition to the right of redemption, had enough sugar-cane attached to pay the full amount of the second judgment, could it be successfully contended that in order to exercise her right of redemption within the term the respondent would have had to deposit not only the judgment of some ₱64,000 in the foreclosure case, but also that ₱100,000 in the second action.

As it afterwards developed, the attached sugar-cane was ample to pay the second judgment, and of this fact the petitioner must be held to have had knowledge, because the

sugar-cane was in the possession of its own employee, acting as receiver. Nevertheless, petitioner persisted in continuing its attachment on the right of redemption, with full knowledge of the decision of the Supreme Court declaring that such attachment prevented the exercise of that right and the term thereof, but the motion contends:

> "The record fails to disclose evidence of a tender within four months and two days from the date of the formal declaration that the attachment had 'ceased to be effective.'"

Responding thereto, we say that the action for an accounting brought immediately after the attachment of the right of redemption was dissolved, suspended the term for redemption, which action, by order of the court, *passed upon the stipulation of the parties*, was continued until the final determination of the case at bar. (See Rec., pp. 145, 148.)

This action for an accounting was brought under section 469 of the Code of Civil Procedure, which provides:

> "The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents have been received by the judgment creditor or purchaser, or his or their assignee from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and, if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits, thus received, the period of redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or

refuse to give such statement, such redemptioner or debtor may bring an action to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor."

In the bill for an accounting the respondent alleged:

"6. That by an order of the 27th of November, 1911, the Islands, declared that the said preliminary attachment of the right of redemption has ceased to have effect."

"7. That on the 6th day of December, 1911 (which it will be noted was less than one month after the dissolution of the attachment), the plaintiff herein, through her attorney, called upon the defendant herein to furnish a detailed statement, in writing and supported by vouchers, of all the rents and profits which had been produced by the hacienda above described, with its appurtenances, from the time that the said Compania General de Tabacos de Filipinas took possession of the same; and for an account of all the expenses and taxes paid by the said company during the time it has held possession of the said property in order that the defendant might know what amount she would have to pay in order to make use of her right to repurchase the said property. A copy of this demand was furnished the provincial sheriff of Occidental Negros, Philippine Islands."

"8. That the defendant is in receipt of the said demand, but in spite of the fact that more than a month has expired, he has not rendered the account above referred to and has refused and still refuses to render said accounting."

9. "That the plaintiff is desirous of making use of the right of repurchase of the Hacienda 'San José' or 'Subongcogon' and its appurtenances abovementioned as soon as she knows the net amount which she has to pay; and that this can only be known after the defendant renders and the court has finally passed upon the accounts demanded."

It should be noted that the answer of the defendant company to this suit for an accounting did not specifically deny the demand for an accounting, but entered only a general denial, and further, that it set up at a special defense the pendency of the present action, which it was said "dealt with the same subject-matter as that of the present action."

In accordance with the stipulation of the parties an order was entered in the suit for an accounting, continuing the same "until a final decision was entered in another case pending between the same parties in the Court of Land Registration, with regard to the issue of title to the Hacienda San José or Subongcogon."

The record showing with regard to this suit for an accounting, we think, in conjunction with the certificate of the clerk of the Court of First Instance showing that long after the filing of the petition for registration the attachment had not been dissolved, nor the receiver discharged, are ample to prove that the term of redemption has not yet expired.

The case of Burley *vs.* Flint, 105 U. S., 247, in nowise supports the motion under consideration. In that case, after the expiration of the time within which the defendant was, under the statute, entitled to redeem, he, without leave, filed his bill praying that so much of the decree as excluded that right be reviewed and reversed. The contention in this case is that the term of redemption has not, for the reasons assigned, yet expired.

Finally we contend that no tender was necessary, because the present application for registration was filed a year and a half before the attachment of the right of redemption was released, and the petitioner's claim of absolute title to the property disclosed that the tender would have been rejected and been in vain, and was therefore unnecessary.

Hills *vs.* National Albany Exchange Bank, 105 U. S., 319.

United States *vs.* Lee, 106 U. S., 196; 38 CYC. 134-136.

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In Conclusion.

There are a number of other points made in the assignment of error which we do not deem it necessary to discuss in detail on this motion. Among them is the obvious estoppel by deed and by inconsistent positions, resulting from the petitioner's reliance on the first trial upon the title acquired from Mondragon in hostility to that of respondent, and the perjured testimony offered in support thereof as a basis for its claim of ownership to the parcel of 146 hectares independently of the mortgage.

It would perhaps be contended by the petitioner that the respondent is estopped from invoking this estoppel by the attitude of her lawyer on the first trial in himself contending that this parcel was included in the mortgage. If when respondent's counsel first made this foolish contention petitioner had acceded thereto, admitting that any right it might have in that parcel was by virtue of the mortgage from respondent, and would consequently, like the Hacienda San José proper, be subject to respondent's defense of right to redeem, then petitioner would perhaps have been relieved from the estoppel created by its fraudulent attempt to establish title in itself adverse to that of respondent, but having persisted in its efforts to maintain what it now practically concedes to have been a false and fraudulent title, upon the chance of winning that parcel unaffected by the defense of redemption under the mortgage, and having lost on that theory, to permit it to reverse its position and claim this excess parcel under the mortgage after the Supreme Court's first decision had relieved it of any risk of redemption, would be to violate every principle of estoppel by deed and by inconsistent positions in judicial proceedings.

As previously stated, the respondent did nothing more inconsistent than to obey the instructions of the Supreme

Court on the subject of the excess parcel. No testimony had been offered by respondent on the first trial to show that the excess parcel, known as Las Pastos, was included in the mortgage, and on the second trial two instruments of lease were offered in evidence by respondent, one for the Hacienda San José, and the other for Las Pastos, both executed at nearly the same time to one Mota, from whom the petitioner acquired by assignment the principal part of its claim against respondent, secured by mortgage on the San José alone.

The error of the Supreme Court in declaring the respondent estopped by her inconsistent positions in the two trials is most manifest, because whatever else may be said of the estoppel against the petitioner it at least should estop that concern from invoking any estoppel against the respondent, thereby leaving the entire question open for decision upon the merits.

After all, the foolish contention of counsel for respondent was induced by his fear of the consequences of a most obvious conspiracy of fraud entered into between the petitioner and Mondragon. The only excuse the petitioner had on the second trial for claiming that the parcel of 146 hectares was included in the mortgage was that in the description of the Hacienda San José contained in the mortgage no mention was made of this adjoining parcel. This is explained by the fact that the petitioner in preparing its own mortgage, followed the description contained in the original grant of the Hacienda San José, which was issued before the respondent claimed title to the adjoining parcel by prescription against the government. There is no proof, though, of any mistake in the description in the mortgage nor of the fact that the petitioner prepared the mortgage to suit itself. The record does show, however, as hereinbefore stated, that the description in the mortgage is that of the original grant.

Referring again to the necessity of a final confirmation of the foreclosure sale, it is clear that had the petitioner claimed

the adjoining parcel of 146 hectares under that sale, that the court would, upon attempted confirmation, have set the sale aside on the ground that the sheriff purported to sell but 465 hectares, whereas it appeared that he had transferred to the purchaser more than 600 hectares.

Surely, the good faith of the appellant will not be reckoned with regard to the point of time appeal and writ of error were sued out, having been sought and obtained within the statutory period.

We earnestly urge, therefore, that the motion be denied.

ALEX. BRITTON,
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F. W. CLEMENTS,
Attorneys for Plaintiff in Error.

APPENDIX.

[No. 10169. October 23, 1916.]

Ruperto Montinola, Plaintiff and Appellant, vs. Juan Tuason, Receiver for the Liquidators Hollman & Company, and José Locsin, Receiver of the Attached Property of Ceferino Domingo Lim, Defendants and Appellees.

Mortgages; Foreclosure by Action; Right to Redeem.—When a mortgagee obtains a judgment upon his mortgage on real property and recovers the amount due thereon by an execution upon said judgment instead of by the methods provided for the recovery of such judgments, and the land is sold under said execution, the mortgagor, or his successors in interest, are entitled to redeem the land in accordance with the provisions of Act No. 190.

Appeal from a Judgment of the Court of First Instance of Iloilo. Bates and Powell, JJ.

The facts are stated in the opinion of the court.

William A. Kincaid and Thomas L. Hartigan for appellant.

Rohde & Wright for appellees.

JOHNSON, *J.*:

This is an appeal from a judgment of the Court of First Instance of the Province of Iloilo. The question presented by the plaintiff and appellant is whether or not he has a right to exercise the equity of redemption with reference to a certain piece or parcel of land sold under execution.

The facts important to the solution of the question are as follows:

First. That on the 19th day of October, 1915, Kuenzle & Streiff commenced an action in the Court of First Instance of the Province of Iloilo against Ceferino Domingo Lim for the purpose of foreclosing a certain mortgage, executed and delivered by the said Lim to Hollmann & Company on the 31st of May, 1902, for the sum of ₱33,174.27, with interest and costs; that Kuenzle & Streiff represented Hollmann & Company in said action. The mortgage covered "a hacienda called Guadalupe," and its appurtenances.

Second. That on the 3d of February, 1906, the defendant, Ceferino Domingo Lim, answered the petition, denying generally all of the facts alleged.

Third. That on the 1st of March, 1906, and after a trial of the issues presented by the petition and the complaint, the Honorable Henry C. Bates, judge, rendered a judgment, the dispositive part of which is as follows:

> It is therefore ordered that the complaint be amended by making Juan Tuason, as receiver of Hollmann & Company, a party plaintiff, and that when so amended, judgment be entered for the plaintiff to recover the sum of ₱44,067.24, and his costs. This sum is due in Philippine currency.
>
> And it is further ordered that the same be made a mortgage lien upon the land and property described in Exhibit No. 4, and that sale of said property be made in accordance with law, in satisfaction of said judgment.

Fourth. That on the 2d of March, 1906, the original petition was amended by adding the said Juan Tuason, in his representative capacity, as the plaintiff in said cause.

Fifth. That on the 2d of March, 1906, the clerk of the Court of First Instance of the Province of Iloilo rendered a final judgment in accordance with the direction of the judge in his decision.

Sixth. That on the 2d of March, 1906, the defendant duly

excepted to said judgment and presented a motion for a new trial, which motion was denied by the lower court on the 31st of March, 1906.

Seventh. That later a bill of exceptions was presented by the defendant and an appeal was regularly taken to the Supreme Court.

Eighth. That the cause was later submitted to the Supreme Court on the 14th of January, 1908. On the 29th of January, 1908, a decision was rendered by the Supreme Court on said appeal and the judgment of the lower court was affirmed, with costs.

Ninth. That on the 2d of March, 1908, the cause was duly returned to the court from whence it came, and was received there on the 12th of March, 1908.

Tenth. That later an execution was requested by the plaintiff, for the purpose of satisfying said judgment. Evidently a writ of execution was issued sometime before the 22d of August, 1908, for the reason that on the 22d of August, 1908, the plaintiff designated certain personal and real property upon which the sheriff might levy said execution.

Eleventh. That said writ of execution was issued for the purpose of selling the property of the defendant, to pay an "unpaid debt."

Twelfth. That by virtue of said writ of execution, property, real and personal, of the defendant was attached and due notice of the public sale of the same was made, and, so far as the record is concerned, the notice of the sale under said attachment was in conformity with the provisions of law.

Thirteenth. That on the 21st of November, 1910, the sheriff proceeded to sell, under and by virtue of said attachment and notice, certain real and personal property, including said "hacienda Guadalupe," and did, on said day, sell the said "hacienda Guadalupe" to Gregorio Yulo, for the sum of ₱4,500, he being the highest bidder for said hacienda.

Fourteenth. That on the same day, the 21st of November,

1910, the sheriff *certified* that the said "hacienda Guadalupe" had been sold to Gregorio Yulo for the sum of ₱4,500, *with the condition that said property was subject to the right of redemption during the period of one year from that date in accordance with the provisions of the law applicable to such a case.*

Fifteenth. That on the 24th of October, 1911, the plaintiff herein, Ruperto Montinola, *notified* the sheriff of the Province of Iloilo that he had *purchased the right of redemption* of the said Ceferino Domingo Lim in the property which had been sold at public auction, and *offered to pay the amount for which said property had been sold* (the hacienda Guadalupe), together with all interests and costs (see page 207, record), *stating that he had purchased the right of redemption* belonging to Lim for the sum of ₱1,500; that he had purchased said right of redemption on the 12th of October, 1911, and presented the contract between himself and the said Lim as proof of his allegations (see page 210, record).

From the foregoing facts it clearly appears that while the action was originally based upon a mortgage, and that the parties had a right to collect the amount of the judgment in accordance with the provisions of the law in the collection of mortgages, yet inasmuch as they elected to collect their judgment by an ordinary execution, they are subject to the burdens which the law imposes upon that method of collecting judgments. Section 465 of Act No. 190 provides that the judgment debtor, or his successor, (section 464) may redeem the property from the purchaser at any time within twelve months after the sale by paying to the purchaser the amount of his purchase, with 1 per cent per month interest thereon in addition up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest on such last-named amount at the same rate.

The record shows that the plaintiff herein is the successor of the original judgment debtor, and that he has paid, or offered to pay, to the purchaser or the sheriff, the amount of his purchase together with all other sums due by virtue of said section 465. Therefore, and for the reasons herein set forth, it is our opinion that the plaintiff is entitled to redeem the land in question upon complying with the provisions of the law with reference to redemption.

Therefore, the judgment of the lower court is hereby revoked, and it is hereby ordered and decreed that a judgment be entered revoking the judgment of the lower court, and that a judgment be entered giving to the plaintiff the right to redeem the parcel of land in question, and without any finding as to costs, it is so ordered.

Torres, Carson, Trent, and Araullo, JJ., concur.

MORELAND, *J.*, concurring:

I agree to the result on the ground that Montinola purchased of the owner the hacienda in question and not on the ground that he purchased the equity of redemption merely. I have at this moment doubts, not however yet ripened into an opinion, that the equity or right of redemption can be sold separate from the land to which it is attached. (Sec. 464 Code Civ. Proc.) In the case at bar the trial court states that the land itself was sold to Montinola by the judgment creditor.

Judgment reversed.

GAUZON *v.* COMPAÑIA GENERAL DE TABACOS DE FILIPINAS.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 437. Motion to dismiss or affirm submitted October 15, 1917.—Decided November 5, 1917.

In a proceeding for the registration of land, begun in the Philippine Court of Land Registration and appealed to the Supreme Court of the Islands, where the former court decreed registration of a part of the land to a petitioner claiming all under a mortgage and foreclosure, but refused registration of the rest upon the ground that it was not shown to have been included in the mortgage, and where the latter court, finding as a fact that all was so included, modified the judgment so as to decree that all should be registered: *Held*, that the last mentioned judgment was properly reviewable by writ of error, and, the case being before this court upon such writ, an appeal which was also taken must be dismissed.

Upon writ of error to a judgment of the Supreme Court of the Philippine Islands, in a case which was decided upon issues of fact, this

court will not reconsider the conclusions of the court below which find support in the record.

Section 4 of the Act of September 6, 1916, c. 448, 39 Stat. 726, does not abolish the distinction between writs of error and appeals, but only requires that the party seeking review shall have it in the appropriate way notwithstanding a mistake in his choice of proceeding.

The court is not disposed to disturb the judgment of the Supreme Court of the Philippine Islands in this case denying the right of a mortgagor to redeem after foreclosure and sale, the rule announced by the court below being derived from a construction of laws applicable in the Islands.

Affirmed.

THE case is stated in the opinion.

Mr. F. C. Fisher for appellee and defendant in error, in support of the motion.

Mr. Alex. Britton, Mr. Evans Browne and *Mr. F. W. Clements* for appellant and plaintiff in error, in opposition to the motion.

Memorandum opinion by direction of the court, by R. JUSTICE DAY.

In this case, submitted upon motion to dismiss or affirm, the present appellee and defendant in error, herein called the Company, made application in the Philippine Court of Land Registration for registration of certain property under the Torrens System. As described and claimed by the Company the hacienda contained 611 hectares, 33 ares, and 82 centares.

The case was twice in the Supreme Court of the Philippines. After its first judgment that court granted a rehearing, and ordered a new trial, and we are concerned now with the writ of error and appeal to this court from the second judgment of the Supreme Court of the Philip-

pines. The Supreme Court states that so far as Romana Gauzon was concerned the hacienda was made up of two portions, one consisting of 465 hectares, 33 ares and 82 centares, by royal grant, while the remaining portion was made up of 146 hectares obtained from other sources. Romana Gauzon had mortgaged the hacienda, and the same was bought by the Company at sheriff's sale; some time thereafter it made the application for registration.

On the retrial, after the first judgment of the Supreme Court, Romana Gauzon claimed to be the owner of the 146 hectares, alleging that they were not included in the mortgage. The Court of Land Registration refused registration of the 146 hectares. That court held that while Romana Gauzon had not shown herself to be the owner of the 146 hectares, the Company had not clearly demonstrated that it was the owner thereof.

The Supreme Court, in the judgment now under review, held that the Company had, as between itself and Romana Gauzon, shown title to the 146 hectares, and modified the judgment of the Court of Land Registration so as to decree the registration of all the land described in the application. This judgment evidently proceeded upon the determination of questions of fact.

The writ of error was the proper method by which to review the judgment of the Supreme Court of the Philippines. *Cariño* v. *Insular Government*, 212 U. S. 449; *Tiglao* v. *Insular Government*, 215 U. S. 410; *Jover y Costas* v. *Insular Government*, 221 U. S. 623. The case being properly here upon writ of error the appeal must be dismissed. Upon such writ the case having been decided upon issues of fact, this court will not reconsider the conclusions of the lower court, which find support in the record, in reaching its judgment.

Whether § 4 of the Act of September 6, 1916, 39 Stat. 726, applies to this action in view of the fact that the appeal and writ of error were taken December 5, 1916,

it is unnecessary to decide, as the section does not change the result. Section 4 provides that the reviewing court shall not dismiss a writ of error because an appeal should have been taken, or dismiss an appeal because a writ of error should have been sued out, but shall disregard such mistakes and take the action appropriate if the proper appellate procedure had been followed. This section does not abolish the distinction between writs of error and appeals, but only requires that the party seeking review shall have it in the appropriate way nowithstanding a mistake in choosing the mode of review.

Upon petition for rehearing in the Supreme Court the plaintiff in error contended that she should have been allowed the right of redemption. Upon that question the court adhered to its first judgment denying the right, and affirmed the doctrine announced in *Benedicto* v. *Yulo*, 26 Phil. Rep. 160. We are not disposed to disturb this judgment of the Supreme Court construing local laws and announcing a rule applicable in the Islands.

The judgment of the Supreme Court of the Philippines is *Affirmed.*